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ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: SUNSET LIMITED

ALTERNATE NAMES:
WONDER
YELLOW ASTER

PIMA COUNTY MILS NUMBER: 154

LOCATION: TOWNSHIP 14 S RANGE 4 W SECTION 25 QUARTER SW
LATITUDE: N 32DEG 10MIN 30SEC LONGITUDE: W 112DEG 38MIN 19SEC
TOPO MAP NAME: MT AJO - 15 MIN

CURRENT STATUS: UNKNOWN

COMMODITY:
UNKNOWN

BIBLIOGRAPHY:
ADMMR SUNSET LIMITED FILE

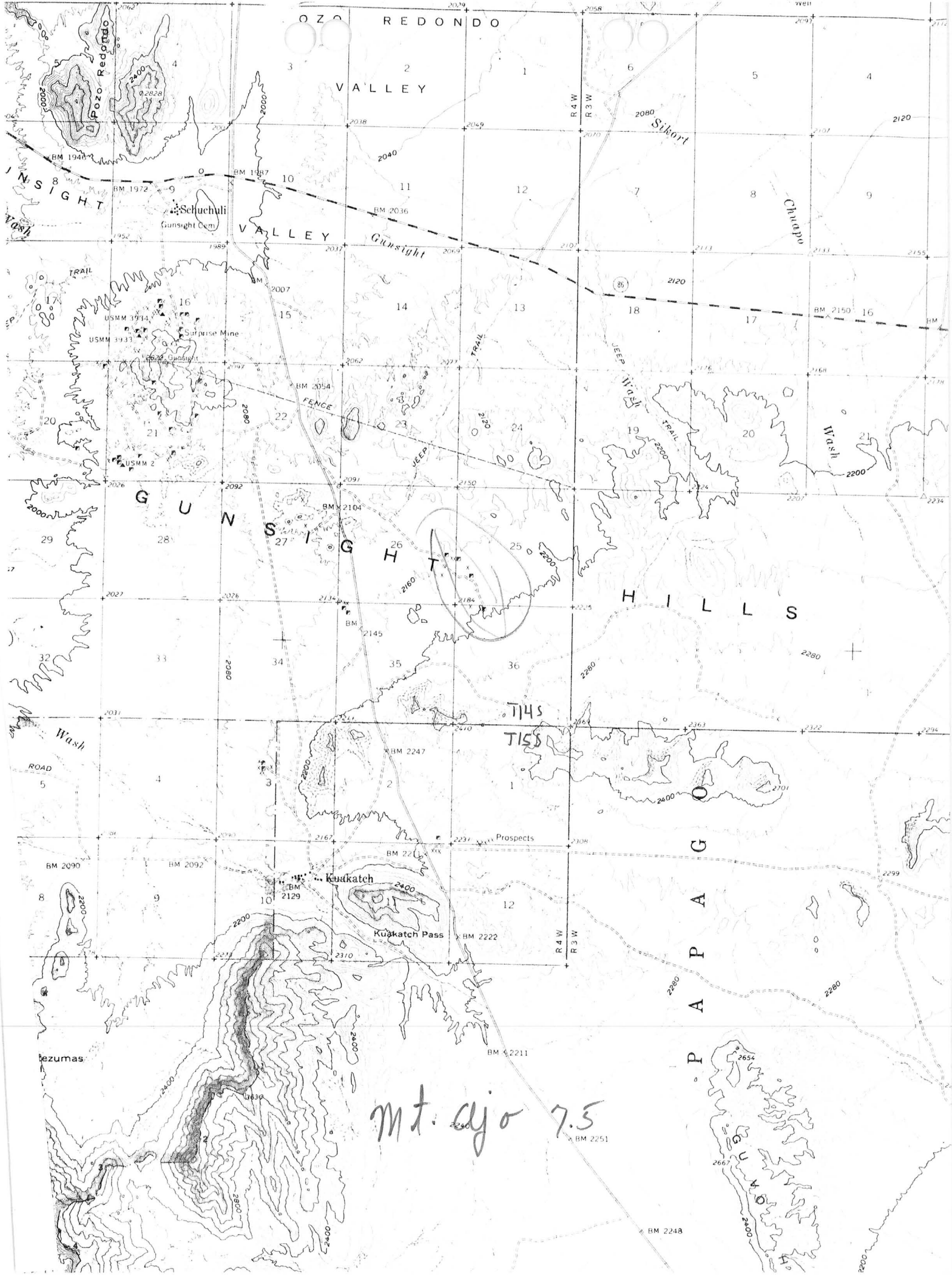
SUNSET LIMITED 6/84 PIMA COUNTY
T14S R~~7~~W Sec 26, 25

AKA: Yellow Aster Claims

MILS Pima Index #154 (Not in printout)

Topo - Mt Ajo ~~7.5~~ 15 (Included in file)

ABM #148, p. 41


POZO REDONDO VALLEY
Pozo Redondo
2828
BM 1940
BM 1987
BM 1972
INSIGHT
Schuchuli
Gunsight Tank
Wash
TRAIL
BM 2007
USMM 3934
USMM 3933
Surprise Mine
Gunsight
BM 2054
FENCE
USMM 2
GUNSIGHT HILLS
BM 2104
BM 2145
JEEP
Wash
ROAD
BM 2247
T14S
T15S
Prospects
BM 2090
BM 2092
Kuakatch
BM 2129
Kuakatch Pass
BM 2222
BM 2211
BM 2251
BM 2248
Sikort
Chuapo
PAPAGO
R4W
R3W
2120
2080
2040
2000
2200
2400
2600
2800
2280
2300
2160
2654
2667

Mt. Ajo 7.5

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

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

May 8, 1978

RECEIVED
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DEPT. MINERAL RESOURCES
PHOENIX, ARIZONA

UNITED STATES OF AMERICA,	:	ARIZONA 9831
	:	
Contestant	:	Involving the Montezuma lode mining claim located
	:	approximately 20 miles
v.	:	southwest of the town of
	:	Ajo, Arizona, and 3 miles
JOHN S. PORTER,	:	south of Arizona State
	:	Highway 86, in the SE^4
Contestee	:	of Section 26, T. 14 S.,
	:	R. 4 W., GSR Mer. (within
	:	the Papago Indian Reservation),
	:	Pima County, Arizona.

DECISION

Appearances: Fritz L. Goreham, Esq., Office of the Solicitor, Department of the Interior, Phoenix, Arizona, for contestant;

John S. Porter, contestee, in his own behalf.

Before: Administrative Law Judge Mesch.

This is a proceeding involving the validity of a lode mining claim located under the General Mining Laws of 1872, as amended, 30 U.S.C. § 22 et seq. The proceeding was initiated by the Arizona State Office, Bureau of Land Management, at the request and on behalf of the Bureau of Indian Affairs.

Pursuant to 43 CFR 4.451, the Bureau of Land Management issued a complaint on August 9, 1977, charging that the subject mining

claim is invalid because (1) "[v]aluable minerals have not been found ... so as to constitute a valid discovery ...." and (2) the land within the claim is nonmineral in character. The contestee filed a timely answer and denied the charges in the complaint. A hearing was held on February 22, 1978, at Tucson, Arizona.

The mining claim is situated within the Papago Indian Reservation. By an Act of May 27, 1955, 69 Stat. 67, 25 U.S.C. § 463, Congress withdrew all land within the Papago Indian Reservation from all forms of exploration, location and entry under the mining laws. The claim was located prior to the date of this Act. There are a number of small pits and at least two rather deep shafts on the property. The shafts are in a state of disrepair and are not safe to enter. There may have been some production of gold and silver from the property in the past. The quantity or value of any production is not known.

At some undisclosed time, but apparently around 1960, representatives of the Bureau of Land Management examined the mining claim. There is some indication that the Bureau concluded the claim was valid. The reason or basis for any such conclusion is not known. The contestee has apparently been paying an annual rental of five cents an acre for the land embraced within the claim to the Bureau of Indian Affairs for the benefit of the Papago Tribe. See 43 CFR 3825.1(b).

The following principles of law are controlling and will be applied in determining the validity of the contested claim.

1. A mining claim does not create any rights against the United States and is not valid unless and until all requirements of the mining laws have been satisfied. One of these requirements is the actual physical finding of a valuable mineral deposit within the limits of the claim. United States v. Coleman, 390 U.S. 599 (1968);[j] Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

2. A valuable mineral deposit is an occurrence of mineralization of such quantity and quality as to warrant a person of ordinary prudence in the expenditure of time and money in the development of a mine and the extraction of the mineral, i.e., the mineral deposit that has been found must have a present value for mining purposes. Chrisman v. Miller, 197 U.S. 313 (1905); United States v. Coleman, supra.

3. Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development

j) GFS(MIN) JD-1(1968)

does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit. Chrisman v. Miller, supra; Barton v. Morton, 498 F.2d 288 (9th Cir. 1974).

4. When land is closed to location under the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. A mining claimant has no rights to endeavor to make a discovery after a withdrawal and thus prevent the United States from devoting the land to other uses. Cameron v. United States, 252 U.S. 450 (1919); United States v. Gunsight Mining Company, 5 IBLA 62 (1972);[k] United States v. Coston, A-30835 (February 23, 1968).[l]

5. Even though a mining claim might have been perfected by the discovery of a valuable mineral deposit at the time of a withdrawal or at some other time in the past, it cannot be considered valid unless it is presently supported by a sufficient discovery. The current conditions must satisfy the requirements of the mining laws. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location. Best v. Humboldt Placer Mining Company, 371 U.S. 334 (1963); Mulkern v. Hammitt, 326 F. 2d 896 (9th Cir. 1964);[m] United States v. Gunsight Mining Company, supra.

6. When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. As a practical matter this requirement is not particularly meaningful. The ultimate burden is on the mining claimant, who is seeking the benefits of the mining laws, to establish that the charges made by the Government are not true and the mining claim is valid. Foster v. Seaton, supra; United States v. Springer, 491 F.2d 239 (9th Cir. 1974); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).[n]

7. In examining a mining claim a Government mineral examiner has no obligation to explore or sample beyond the mining claimant's workings, to rehabilitate the workings, or to perform sufficient work to reach a definite conclusion as to whether a valuable mineral deposit does or does not exist somewhere within the limits of a mining claim. If a valuable mineral deposit exists, it is incumbent upon the claimant to discover it. The function of the Government mineral examiner is simply to verify, if feasible, whether the claimant has, in fact, found a valuable mineral deposit. United States v. Ramsey, 14 IBLA 152 (1974);[o] United States v. Woolsey, 13 IBLA 120 (1973).[p]

k) GFS(MIN) 12(1972)
l) GFS(MIN) SO-16(1968)
m) GFS(MIN) JD-1(1964)
n) GFS(MIN) 13(1975)
o) GFS(MIN) 12(1974)
p) GFS(MIN) 89(1973)

The contestant presented the testimony of two consulting geologists who, based upon their education, experience, examination of the claim, and the assay result of one sample, expressed the opinions that the mineralization found within the claim was not such as to warrant a prudent person in the expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. The testimony of the two experts constituted a prima facie case in support of the allegation that the mining claim is invalid because a valuable mineral deposit has not been found within the limits of the claim.

The contestee testified in his own behalf. His position with respect to the mineralization within the claim is shown by the following statements or testimony:

> Actually to determine the value of that claim, probably 40 core drills should be run down through the first 50 feet and offset 50 feet below in order to really determine what's down there because you can pick up samples that are very valuable in one place and have no value in another. (Tr. 18, 19)
>
> * * *
>
> JUDGE MESCH: Your first concern would be to see if the mineralization can be extracted by your process?
>
> THE WITNESS: Yes.
>
> JUDGE MESCH: Then, if you determine that the mineralization can be extracted by your process, then the next step would be to ascertain the quantity and the quality of the mineralization?
>
> THE WITNESS: That's right. By core drilling, I think, is the only way I know, along those veins. They outcrop at the top of the ground. You can see them coming out along and they should be core drilled to find out what's down there. (Tr. 38)

The contestee did not present any evidence from which any conclusions might be drawn as to (1) the amount of mineralization that might be available for extraction, (2) the value of the mineralization that might be extracted, or (3) the costs of extracting and marketing the mineralization. Without some information relating to each of these three factors, no one could conclude that a mineral deposit has been found with a present value for mining purposes. Accordingly, it must be concluded that the contestee did not meet his burden of proof by showing that a valuable mineral deposit has been found within the contested mining claim.

At best, the evidence presented by the contestee simply shows that the property might warrant the expenditure of some prospecting or exploration time and money in an effort to ascertain whether a valuable mineral deposit might be found. It does not show that a valuable mineral deposit has been found. A sharp distinction must be drawn between finding some mineralization (even of high potential value) and finding a valuable mineral deposit. In Barton v. Morton, supra, the Court quoted the following with approval:

> ... It is nowhere suggested that any quantity of material of the quality of the vein matter thus far disclosed would constitute a mineable body of ore. The evidence does not, in fact, establish any mineral quality of any consistent extent. Although appellants have found ore samples with indicated values exceeding $70 per ton, the record does not support a finding that they have found a deposit yielding ore of that quality, or of any other quality, the exploitation of which may be contemplated ....
>
> ... That which is called for ... is further exploration to find the deposit supposed to exist. (p. 291)

In view of the evidence presented in this proceeding, it is not a good reflection on the Bureau of Land Management if its mineral examiners in the 1960's concluded that the mining claim was valid, and it is unfortunate if the contestee acted in reliance on the actions of the Bureau's mineral examiners. Nevertheless, it must be concluded that the mining claim is invalid because the evidence establishes that a basic requirement of

the mining laws has not been met. The case has to be decided on the basis of the evidence presented and not on past actions of the Bureau of Land Management. In United States v. Williamson, 75 I.D. 338 (1968),[q] the Department stated:

> ... The Department of the Interior has been granted 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 claim. [Citations omitted.] In the exercise of this power, the Department has held, the doctrine of res judicata has no application to proceedings in the Department relating to the disposition of public land until legal title passes, and, prior to that time, findings of fact and decisions by the Secretary or his subordinates are subject to reexamination and revision in proper cases. [Citations omitted.] (p. 342)

While the claim is invalid because it is not supported by the discovery of a valuable mineral deposit, this does not mean that the contestee might not have some right or remedy by reason of any advance rental collected by the Bureau of Indian Affairs. I have no authority, however, to determine the rights of the contestee in this regard. My sole function is to decide, on the basis of the evidence presented, whether the contested mining claim is invalid as alleged by the Bureau of Land Management in its contest complaint.

Pursuant to the prayer of the complaint, the Montezuma lode mining claim is declared invalid.

Robert W. Mesch
Administrative Law Judge

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

United States Department of the Interior

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

RECEIVED
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DEPT. MINERAL RESOURCES
PHOENIX, ARIZONA

UNITED STATES
v.
JOHN S. PORTER

IBLA 78-454 Decided October 25, 1978

Appeal from a decision of Administrative Law Judge Robert W. Mesch, declaring a lode mining claim null and void. A 9831.

Affirmed.

1. Mining Claims: DISCOVERY--Nature of Requirement--burden of proof--extent of deposit; PRACTICE AND PROCEDURE--Hearings--burden of proof--evidence--prima facie case--witnesses.

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

2. Mining Claims: DISCOVERY--Nature of Requirement--duty of mineral examiner--extent of deposit.

It is incumbent upon the mining claimant, not the Government's mineral examiner, to do thac amount of work which is necessary to discover a valuable mineral deposit.

3. Mining Claims: DISCOVERY--Proof--determination of validity; PRACTICE AND PROCEDURE--Evidence.

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

APPEARANCES: John S. Porter, pro se.

INDEX CODE:
43 CFR 4.451
43 CFR 3825.1(b)

GFS(MIN) 114(1978)

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John S. Porter has appealed from a decision by Administrative Law Judge Robert W. Mesch, dated May 8, 1978, declaring the Montezuma lode mining claim null and void for lack of discovery of a valuable mineral deposit.

This proceeding was initiated by a contest complaint filed by the Bureau of Land Management (BLM), on behalf of the Bureau of Indian Affairs, which charged:

> 1. Valuable minerals have not been found within the limits of the Montezuma lode mining claim so as to constitute a valid discovery within the meaning of the mining laws.
>
> 2. The land embraced within the Montezuma lode mining claim is non-mineral in character.

The administrative law judge held that the appellant had not shown that a valuable mineral deposit existed on the subject claim at the time of the hearing or that it existed at the time of the withdrawal of the land from mining location pursuant to the Act of May 27, 1955, 25 U.S.C. § 463 (1970).

The judge's decision sets out a summary of the pertinent evidence and the applicable law as well as his findings and conclusions. We are in agreement with his decision and, therefore, adopt it as the decision of this Board. 1/ A copy of it is attached hereto.

[1] Two consulting geologists testified for the Government that they had examined the claim and found the mineral values insufficient to support a finding of discovery. This testimony established the Government's prima facie case, requiring that the mineral claimant overcome the Government's showing by a preponderance of the evidence. United States v. Miles, 36 IBLA 213 (1978);[a] United States v. McClurg, 31 IBLA 8 (1977);[b] United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975).[c]

[2] In rebuttal, appellant asserts that the one sample, taken and assayed by the Government's witnesses, was not representative of the extent of mineral deposits on the subject claim, and thus, do

1/ We do wish, however, to note our disagreement with the statement found at page two of the judge's decision that the requirement that the Government establish a prima facie case "as a practical matter * * * is not particularly meaningful."

a) GFS(MIN) 83(1978)
b) GFS(MIN) 31(1977)
c) GFS(MIN) 13(1975)

not give a true picture of the claim's value. We are unable to agree. More samples might simply have confirmed the fact that negligible amounts of minerals existed on the claim. Moreover, as the judge correctly pointed out, the Government's mineral examiners are not required to sample every inch of a claim in order to determine whether any possible accumulation of minerals exists. We note that the appellant was given an opportunity to select the best spot for sampling, based on his knowledge of the claim (Tr. 23). This was sufficient. It is incumbent upon the claimant, not the Government's mineral examiners, to do that amount of work which is necessary to discover a valuable mineral deposit. United States v. Gay, 36 IBLA 148 (1978);[d] United States v. Slater, 34 IBLA 31 (1978);[e] United States v. Taylor, supra.

Appellant offers, as proof of a valuable mineral deposit, assay certificates and laboratory reports from 1939, 1955-7 and 1959 purporting to show the accumulation of minerals on the claim. There is little mention of where the samples were taken and no indication of the method of sampling. The claim has not been mined since 1955 (Tr. 40). Appellant alleges that prior to that time two miners were "making a living from [the claim]."

[3] After reviewing appellant's evidence, we are unable to give much weight to it. As we said in United States v. Nicholson, 31 IBLA 224, 233 (1977):[f]

> Assay results have no probative value without further evidence establishing how each sample was taken and where the sample was taken from so that the fact-finder can determine how accurately the sample represents what remains in the ground. By themselves, the assay reports do not tell us whether the samples were taken from areas of isolated mineral occurrences or from areas of continuous mineralization. They tell us nothing about the size or extent of the deposit from which they were taken. [Emphasis added.]

Without such information, it is impossible to determine whether there is an occurrence of mineralization of such quantity and quality as to warrant a person of ordinary prudence in the further expenditure of time and money in the development of a mine and the extraction of the mineral.

Furthermore, even if there had been a discovery in the past, evidence of this would not be sufficient to establish that a valuable mineral deposit existed on the claim at the time of the hearing and that it existed at the time of the withdrawal of the land from mining location. United States v. Nicholson, supra; Andrew J. Van Derpoel,

d) GFS(MIN) 80(1978)
e) GFS(MIN) 23(1978)
f) GFS(MIN) 42(1977)

33 IBLA 248 (1978).[g] Appellant has offered no reason why we should disturb the findings and conclusions of the judge.

Finally, appellant requests "the chance to thoroughly investigate the potential by spending money on new assays and core drillings, etc." While assays and core drillings may be allowed even after a withdrawal to confirm a discovery made prior to the withdrawal, United States v. Foresyth, 15 IBLA 43 (1974),[h] it is still incumbent upon the mining claimant to show at the time of the hearing on the claim's validity that a discovery of a valuable mineral deposit had been made as of the date of the withdrawal and had been maintained as a present fact. Appellant received adequate notice of the pendency of the hearing and should have, at that time, made diligent efforts to assemble such information as would support the claim's validity. We can find no exculpatory factors similar to those which were manifest in United States v. Foresyth, supra, which would justify the grant of a further opportunity to prove the existence of a discovery. See United States v. Johnson, 33 IBLA 121 (1977).[i] Appellant's request is therefore denied.

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.

James L. Burski
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

g) GFS(MIN) 11(1978)
h) GFS(MIN) 27(1974)
i) GFS(MIN) 2(1978)