

**Editor's note: Reconsideration by Director denied by order dated Dec. 14, 1972; Appealed -- aff'd, (C.D. Calif. March 6, 1973) aff'd, No. 73-1876 (9th Cir. Jan. 17, 1974), rehearing denied (Feb. 26, 1974) 491 F.2d 239 cert. denied, S. Ct. No. 73-1771 (Oct. 15, 1974), 419 U.S. 834, 95 S.Ct. 60**

UNITED STATES  
v.  
CURTIS H. SPRINGER, ET AL.

IBLA 73-66

Decided November 14, 1972

Appeal from a decision by Administrative Law Judge 1/ Graydon E. Holt declaring appellants' lode mining claim (R 1888) and placer mining claims (R 1907) null and void.

Affirmed as modified.

Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests

A mining claim is properly declared invalid where the government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of evidence that the claim is valid.

Mining Claims: Discovery: Generally

To constitute a valid discovery there must be shown to exist within the limits of the mining claim a valuable mineral deposit, which is subject to location under the mining laws and which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success in developing a paying mine.

Mining Claims: Generally--Mining Claims: Discovery

The provisions of Rev. Stat. § 2332, 30 U.S.C. § 38 (1970), do not dispense with the necessity of proving a valid discovery on a mining claim.

Mining Claims: Location

A compound, of which sodium is a major constituent, is not subject to location under the mining laws; if disposable from the

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1/ The change of title of the hearing officer from "Hearing Examiner" to "Administrative Law Judge" was effectuated pursuant to order of the Civil Service Commission, 37 F.R. 16787 (August 19, 1972).

public lands it would be subject only to lease or permit under the Act of February 25, 1920, §§ 23-25, as amended, 30 U.S.C. §§ 261-263 (1970).

APPEARANCES: George W. Nilsson, Esq., and Monta W. Shirley, Esq., Los Angeles, California, for appellants. James E. Goodhue, Esq., Office of the Solicitor, Department of the Interior, for the United States.

OPINION BY MR. GOSS

Appellants have appealed from a decision dated July 6, 1972, declaring their one lode mining claim and nine placer mining claims null and void for failure to show discovery of a valuable mineral deposit on any of the claims.

Among the reasons for appeal, appellants assert that:

- (1) The decision promulgates discovery requirements beyond those set forth in the mining laws, and hence the decision is unconstitutional legislation.
- (2) In a mining claim contest, the government has the burden of proof.
- (3) The Bureau of Land Management had no right to file a contest action.
- (4) Title to an unpatented mining claim is substantially the same as fee title, and the government merely holds title in trust for the appellants.
- (5) The Department is bound by a Geological Survey finding that the land is mineral in character.
- (6) Under Rev. Stat. § 2332, 30 U.S.C. § 38 (1970), appellants are entitled to a patent.
- (7) The decision is contrary to the evidence, appellants having proved a discovery under the prudent man rule.
- (8) The decision is contrary to unspecified provisions of the mining laws, the Administrative Procedure Act and other applicable laws.

Appellants' principal contentions on appeal are identical to those asserted in their brief to the Judge following the hearings in this case. After reviewing the record and decision, it is determined that his findings and conclusions as to the issues herein are correct. The Judge's statement that the use of sand and gravel for

the construction of buildings for the resort facilities constituted a trespass is beyond the scope of the contest proceedings. With that exception, we adopt the Judge's decision as that of the Board and attach a copy hereto. The mining law has been administered by the Department in accordance with judicial and administrative precedents. That the claims now embrace a 40 room motel and an assorted investment of some \$700,000 is regrettable, but to paraphrase the decision below:

There is nothing in the mining law which authorizes the location of a mining claim on the public lands for the construction and use as a health resort.

The decision does not impose discovery requirements beyond those set forth in the mining laws. Neither does the government have the burden of proof in a mining claim contest. The government has the burden of establishing a prima facie case of lack of discovery. The burden then shifts to the contestees to establish by a preponderance of the evidence that there has been a discovery of a valuable mineral deposit on each claim. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). The government presented its prima facie case through the testimony of Edward Cruskie, mining engineer. Appellants have failed to sustain their burden.

The authority of this Department to determine the validity of unpatented mining claims has been long recognized, and the owners of an unpatented mining claim do not gain full title to the claim until a patent is issued. The Supreme Court in Cameron v. United States, 252 U.S. 450, 460 (1920), stated the rule:

A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public.

Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void.

30 U.S.C. § 38 (1970) provides that persons who hold and work their mining claims for a period equal to the time period prescribed by the statute of limitations for mining claims in the state where the claim is located, and who produce evidence thereof, shall establish a right to patent. Section 38 does not establish an independent means of acquiring title to a mining claim, nor does it dispense with the requirement that there be a valid discovery on each claim. In Cole v. Ralph, 252 U.S. 286 (1920) the reason for the discovery requirement is discussed at pages 305-07:

The effect which must be given to section 2332, Rev. St., in circumstances such as are here disclosed--whether it substitutes something else in the place of discovery or cures its absence--is the matter we have to consider. That the section is a remedial provision and designed to make proof of holding and working for the prescribed period the legal equivalent of proof of acts of location, recording and transfer, and thereby to relieve against possible loss or destruction of the usual means of establishing such acts, is attested by repeated rulings in the land department and the courts. But those rulings give no warrant for thinking that it disturbs or qualifies important provisions of the mineral land laws, such as deal with the character of the land that may be taken, the discovery upon which a claim must be founded, the area that may be included in a single claim, the citizenship of claimants, the amount that must be expended in labor or improvements to entitle the claimant to a patent, and the purchase price to be paid before the patent can be issued. Indeed, the rulings have been to the contrary.

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As respects discovery, the section itself indicates that no change was intended. Its words, "have held and worked their claims," presuppose a discovery; for to "work" a mining claim is to do something toward making it productive, such as developing or extracting an ore body after it has been discovered. Certainly it was not intended that a right to a patent could be founded upon nothing more than holding and prospecting, for that would subject nonmineral land to acquisition as a mining claim.

See also United States v. Charles W. Kohl and Cora A. Kohl, 5 IBLA 298 (1972), and United States v. Richard A. Haskins, et al., 3 IBLA 77 (1971).

ZZYZX Crystals is a compound, a major constituent of which is sodium. That the land contains the mineral sodium is immaterial, since sodium is not subject to location under the mining laws. Sodium on the public lands, if disposable, would be subject to lease or permit at the discretion of the Secretary under the Act of February 25, 1920, §§ 23-25, as amended, 30 U.S.C. §§ 261-263 (1970).

The clay used in ZY-MUD facials has been found to be an ordinary clay not subject to location.

Appellants' other arguments have been reviewed, but do not merit reversal of the decision below.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' motion for summary decision is denied and the decision appealed from is affirmed as hereby modified.

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Joseph W. Goss, Member

We concur:

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Frederick Fishman, Member

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Douglas E. Henriques, Member

UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
Hearings Division  
Room W-2426, 2800 Cottage Way  
Sacramento, California 95825

July 6, 1972

DECISION

United States of America,	:	<u>Contest Nos. R-1888 and R-1907</u>
Contestant	:	
	:	Involving Buddie No. One lode
v.	:	mining claim; and ZZYZX Nos.
	:	Two, Three, Four, Five, Six,
Curtis H. Springer, et al.,	:	Seven, Eighteen, Nineteen, and
Contestees	:	Twenty placer mining claims,
	:	located in Secs. 2 and 11,
	:	T. 12 N., R. 8 E., and SE-1/4
	:	Sec. 35, T. 13 N., R. 8 E.,
	:	S.B.M., San Bernardino County,
	:	California

Preface

These proceedings were initiated by the Bureau of Land Management through the filing of complaints in the Riverside Land Office on November 26 and 27, 1968. In Contest 1888 the contestant alleged as to the lode claim that:

1. Valuable minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery.
2. The lands embraced within the claim are nonmineral in character.

In Contest 1907 the contestant alleged with respect to the placer claims that:

1. Valuable minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.
2. No discovery of a valuable mineral has been made within the limits of the claims because the mineral materials present cannot be marketed at a profit and it has not been shown that there exists an actual market for these materials.

The contestees, through the law offices of Lonergan, Jordan & Gresham, San Bernardino, California, filed a timely answer in which these allegations were denied.

Thereafter, a hearing was held in Los Angeles, California on September 16, 1969. The Government was represented by George H. Wheatley, Attorney, Office of the Solicitor, U. S. Department of the Interior, Los Angeles. The contestees were represented by Dilling & Dilling, Attorneys at Law, Chicago, Illinois and Mrs. Gladys Towles Root, Attorney, Los Angeles, California. The law firm of Lonergan, Jordan & Gresham had withdrawn from the proceedings. A second hearing was held on January 13, 1970. At that hearing Mrs. Root represented the contestees. The firm of Dilling & Dilling had withdrawn from the proceedings. The third hearing was held on December 14, 1971. George W. Nilsson, Attorney, Los Angeles, represented the contestees. Mrs. Root by this time had withdrawn from the proceedings. The witnesses were Edward F. Cruskie, a mining engineer employed by the Bureau of Land Management; Earl Westerfeld, a graduate of Ohio State with a degree in chemistry, who has been employed in the smelting and processing of precious ores; Mrs. Helen Springer, one of the contestees; Dr. Springer; and Stuart Ingram, a mining engineer.

#### Summary of Testimony

The contestant's case was presented through the testimony of Mr. Cruskie. He examined the claims and surrounding Soda Mountains on several occasions. He stated that the mountains were underlain with granitic and metamorphic material of the Cenozoic age and that they contained no outcrops of quartz or any minerals which could have commercial possibilities. Also he examined a U. S. Geological Survey Report, Bulletin 1045-C, which contains the results of core drilling of Soda Lake. The lake was drilled to depths from 700 to 1000 feet and the cores showed silts, mud, and miscellaneous clays, but no potentially valuable salt or potash beds. On the claims he found no shafts, tunnels, or workings which he felt justified sampling. He found cluded that there was not a mineral deposit with sufficient value on any one of the claims to justify development (Tr. 49 and 419).

The story of the Springer operation at ZZYZX (pronounced "ZiZex") on Soda Lake near Baker, California, was told by Dr. Curtis H. Springer <sup>1/</sup> in an open letter to the public (Ex G) and as a witness at the hearing. In his open letter he started with the heading "One of the Strangest Stories Ever Told." The story in his words begins:

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<sup>1/</sup> He attended high school for less than two years and a bible school for one year. Although he does not have a doctoral degree, he has used the appellation of doctor for many years. He is now in his mid 70's (Tr. 308, 312).

"Let us now go back some twenty-five years to September 13, 1944. I was forty-eight years of age, had accumulated all that I had need of for life and had retired. I had been a coal miner, had studied for the ministry at West Virginia Wesleyan College and Moody Bible Institute and had received my credentials as a Methodist preacher. I had been privileged to occupy many pulpits in evangelistic work and with my tent have been privileged to point many souls to the Master. Having promised God that I would never take a collection or accept money in the ministry, I made my living largely as a contractor in many states, but always using any profits to finance my ministry and the building of Health Institutions in six states. All of these institutions, had as their objective the helping of those who were physically and spiritually sick, to guide them where possible to God and right thinking so that they might be able to lay hold on that power and strength that God alone can grant unto His children. I had been active in many other fields of endeavor, and as many of you friends know, had been broadcasting from the very beginning of radio, back in the early nineteen twenties." 2/

By 1944 he had a ministry of the air and was broadcasting from coast to coast 7 days a week. At the time one of the leading radio programs was sponsored by a company selling mineral crystals produced in Texas. Because of the popularity of these crystals, he sought a similar product in California. After he found a reference to Fort Soda Springs in a book at a second hand store in Los Angeles, he and a number of other people began searching in San Bernardino County for the Fort. He eventually found the remnants of the abandoned Fort on Soda Lake south of Highway 15 approximately half way between Barstow and the Nevada State Line. Here there was "a beautiful oasis with wild ducks, wild geese, fish in abundance but apparently abandoned by civilization". The next day he and his associates started doing "discovery work" and monumenting mining claims. Eventually they filed mining locations for 12,800 acres of public land in and adjoining the dry lake bed. Their intent at the time was to recover saline minerals by solar evaporation (Tr. 216). Again in his own words:

"Here was a brand new challenge for me to come out of retirement and go back to work. I was only forty-eight, with no need for money and having been a contractor for years, I accepted this as a challenge from God to get out my tools, reactivate my contractor's license and go back to work.

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2/ The lengthy quotations are from Exhibit G.

"We sold our beautiful home in Hollywood. I was fed up with social life anyway, so got busy building another institution that we could dedicate to God and service to His children."

At first they lived in tents and had their "Sunday afternoon prayer meeting under a screwbean mesquite tree as we thanked God for his many blessings and the blessed privilege of converting historic Fort Soda into a modern Christian institution for the glory of God and service to Him." After a short period Navajo Indians helped him make concrete blocks by hand and with these blocks the first permanent buildings were built. Later through the efforts of a cooperative Judge in Los Angeles men who needed to get away from "liquor" were sent out to help build the permanent buildings. <sup>3/</sup> During the course of constructing the buildings the Riverside Cement Company supplied over 15,000 sacks of cement at cost, and the National Metals and Steel Corporation, located at Terminal Island, gave them thousands of dollars worth of stainless steel stoves, ovens and other equipment salvaged from naval ships which were decommissioned after World War II.

They now have a 40-room, 80-bed motel and again in Dr. Springer's words:

"We have twenty thousand gallons of Propane storage and twelve thousand gallons of Diesel fuel storage. We have our own heavy duty road equipment including two large bulldozers, a giant earth mover, scrapers, road graders, etc. Also, about five thousand shade trees, two thousand palms and over a thousand flowering bushes, all landscaped and under irrigation. Millions of gallons of sparkling mineral water flows by hydrostatic pressure from the depths of the earth to a level of seven and a half feet above the desert. In fact, Lake Tuendae is five feet above the desert level and we have three more lakes under construction because we have an abundance of wonderful water. In fact, we have a beautiful fountain on Crusoe island, in the middle of Lake Tuendae. It sparkles in the desert sunlight.

"God has blessed us in a wonderful way and during these years, as quoted from the San Bernardino County Sheriff's Annual: 'Over one million people have been cared for at ZZYZX Mineral Springs, including three-fourths of a million free meals and one-fourth of a million free beds.' This would, of course be an approximate figure but not one person has ever been refused food and shelter in these twenty-five years.

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<sup>3/</sup> See Tr. 375. The record is not clear whether this arrangement was voluntary or involuntary.

"With all of these accomplishments, under God, having become a reality, with a modern 100% fireproof institution with full power and fuel reserves and with twenty-five year history of achievement, we are happy to state that no one penny is owed on any equipment or buildings. We have never taken a collection, yet God has seen fit to answer our prayers in the creation of this institution with no financial obligations for others to pay. We will win this battle, but need your prayers." 4/

In objecting to the contest brought by the Bureau of Land Management, Dr. Springer stated:

"Millions of acres have been given to the Railroads and great corporations but an institution, dedicated to God's work and with a history of over twenty-five years of service to humanity and with seventeen of these years openly functioning with apparent U.S. Government approval, at least never a word or letter to the contrary, must now be called 'squatters' or 'trespassers,' and ordered to leave their expenditure of approximately two million dollars. It just doesn't make sense, and herein comes the desperate need of your prayers and assistance.

"Let us pause for a moment and take stock of the situation and then let us ask God to guide us that we might deal with this problem as is right in His sight. He is guiding us, you know.

"Here we have an institution that has been functioning for twenty-five years. Thousands of shade trees, millions of blossoms, three concrete swimming pools, one lake completed and three more started with ample water for all. Fireproof buildings to house over one hundred of His children, complete power and storage facilities installed and working. All of this built and completely paid for without a penny of debt against any part. No need for a campaign to raise money to pay old bills and a staff of directors all of whom are dedicated to our work and have an income separate and apart from this work and who are happy to work for this institution without pay."

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4/ The "battle" is in reference to this proceeding.

"Have you heard of anything like this before, and yet it is about to be taken from us because the U.S. Land Office, for some reason, don't want us to have it? They have millions of acres of additional land all around this property but in twenty-five years have not made a move to develop or improve any of the adjoining land.

"They have watched us build this institution, spend over two million dollars in construction, maintenance and operation, they were shown plans, pictures of developments and for over seventeen years voiced no opposition. Their Manager told our committee it was open land and available to us, but now they refuse to perform in keeping with his assurances from the first.

"By simple stroke of a pen, the land could be ours as a grant. They have given millions of acres to railroads and other large corporations. What is wrong with encouraging God's work, just a little. We have told them we will be happy to defray any costs incidental to such a move as they might feel was best for the transfer. We have shown our good will by spending all that we had and have left no debts for materials or construction. Their attitude just doesn't make sense . . . ."

During his broadcasts Dr. Springer mentions a number of products that he offers to send on request without charge. Each gift is accompanied by a suggestion that a suitable contribution be made to the Dr. Curtis Howe Springer Foundation so that the work for the Lord may be continued. In the open letter the list of products which are given away and the suggested contributions are listed as follows:

"Order from this List and Allow  
Two to Four Weeks for Delivery                      Retail Suggested  
by Parcel Post \_\_\_\_\_      Quantity Price Contribution

ANTEDILUVIAN HERB TEA (Botanical Laxative)	24 ozs	\$15.00	\$10.00	3 for \$25.00
DELICIOUS MANNA (Vegetarian Food Supplement)	24 ozs	15.00	10.00	3 for 25.00
NERVE CELL FOOD (N.C.F.)	24 ozs	15.00	10.00	3 for 25.00
ANTHRON (My Mother's Favorite Food)	24 ozs	25.00	15.00	2 for 25.00
"YUTH" (A Food For The Young at Heart)	24 ozs	15.00	10.00	3 for 25.00
HOLLYWOOD "PEP COCKTAIL" (PICKUP)	24 ozs	15.00	10.00	3 for 25.00
"RE-HIB" (Potential Iron Bearing Foods)	24 ozs	15.00	10.00	3 for 25.00

PRISTINE (Vegetarian, Potential Protein Foods)	24 ozs	15.00	10.00	3 for 25.00
CAL PLUS (Potential Calcium Bearing Foods)	24 ozs	15.00	10.00	3 for 25.00
BAN-O-WHEY (Appetite Discourager)	24 ozs	15.00	10.00	3 for 25.00
NEPTUNES (Potential Iodine Bearing Foods)	24 ozs	15.00	10.00	3 for 25.00
TROPICOES (Dehydrated Foods Of The Tropics)	24 ozs	15.00	10.00	3 for 25.00
LAMOURI (Vegetarian, Potential Vitamin C Foods)	24 ozs	15.00	10.00	3 for 25.00
F-W-O (Food Delightfully Pleasing to Women)	24 ozs	15.00	10.00	3 for 25.00
NORM (A Basic Food Supplement)	24 ozs	25.00	10.00	2 for 25.00
ZY-MUD (Minerals from the Mojave for Facials)	30 ozs	15.00	10.00	3 for 25.00
ZZYZX FOOT CRYSTALS (For Poor Tired Feet)	40 ozs	15.00	10.00	3 for 25.00
B-PLUS (A Food Supplement for the Whole Family)	24 ozs	15.00	10.00	3 for 25.00
O-M-R (An Anti-Acid Containing Food Value)	24 ozs	15.00	10.00	3 for 25.00
COTOLOYDS (DELICIOUS FOOD Supplement)	24 ozs	15.00	10.00	3 for 25.00
ALLEROIDS (Natural Source Containing Vitamine A)	200 cap	15.00	10.00	3 for 25.00
EMBROIDS (Natural Source Containing Vitamine E)	300 cap	15.00	10.00	3 for 25.00
IMPERIALS (German Formulae - Pain Relieving)	200 tab	5.00	4.00	3 for 10.00
ORGANIC RETURN (Containing Foods from the sea)	2 prod	15.00	10.00	3 for 25.00
DANGO (To Assist in Conditions of Dandruff)	2 prod	15.00	10.00	3 for 25.00
MO-HAIR (A Plan to Assist Live Hairs to Grow)	3 prod	15.00	10.00	3 for 25.00
COSMO (Suggested by an Indian for Lovely Skin)	3 prod	15.00	10.00	3 for 25.00
HEMORRHOID RELIEF (A system to Assist Nature)	3 prod	25.00	15.00	3 for 25.00
SHANGRALAE (Suggested by an Asian Missionary)	4 prod	20.00	15.00	2 for 25.00

"If you have need of any of our products, we will thank God for the privilege of sending them to you as a gift. We do not sell them to you, but ship them as a gift when we are convinced you have need of them and are unable to contribute toward their cost. Learn to `Eat Your Way to Health'".

The two underlined items are produced from the ZZZZX claims. After every rainfall (there are sometimes several a year) the water on the lake bed draws saline minerals up from the clay bed of the lake. When the water is evaporated by the heat of the sun, the minerals crystalize and are left as incrustations on top of the clay bed (Ex. I). The lake bed is approximately 7 miles wide and close to 14 miles long. The crystals on the surface of the lake bed are gathered, crushed into a fine powder, and after perfume is added to improve the fragrance, placed in small cans for distribution. Also the crystals are secured by running the water from mineral springs (on Claims 2, 3, 4, 5, 6 and 7 as shown on Ex. L) into large vats where again solar heat is used to evaporate the water which in turn causes the minerals to crystalize (Tr. 236).

The wrapper for the can (Ex. H, page 4) shows a picture of Dr. and Mrs. Springer, a photo of their motel and the following label:

[photocopy of label]

A spectrographic analysis of the crystals prepared by Smith-Emery Company, show the following constituent minerals:

<u>Element</u>	<u>Approximate Percent</u>
MAJOR CONSTITUENTS	10 or Greater
Silicon, Sodium	
INTERMEDIATE CONSTITUENTS	2 to 10
Aluminum, Magnesium, Iron, Potassium, Calcium	
MINOR CONSTITUENTS:	
Titanium	0.5 %
Boron	0.5 %
Lead	0.05 %
Vanadium	0.05 %
Barium	0.05 %
Manganese	0.01 %
Strontium	0.01 %
Copper	0.005%
Chromium	0.005%
Nickel	0.001%
Other elements	None detected

The crystals generally are within the top six inches of the lake bed. Below the top six inches is the clay that is ground, perfumed, and placed in cans and distributed for use as a facial mud pack under the name ZY Mud or Mojave Mud. Like all of the other Springer products this clay is mailed without charge to anyone who requests it, and each package has a list of suggested contributions. This clay was analyzed spectrographically by Smith-Emery Company with the following results (Ex. H, page 7):

<u>Element</u>	<u>Approximate Percent</u>
MAJOR CONSTITUENTS	10 or Greater
Silicon	
INTERMEDIATE CONSTITUENTS	2 to 10
Aluminum, Iron, Sodium, Potassium	
MINOR CONSTITUENTS:	
Magnesium	1.0 %
Calcium	1.0
Titanium	0.5
Barium	0.1
Strontium	0.05
Molybdenum	0.01
Vanadium	0.01
Manganese	0.01
Chromium	0.005
Copper	0.001
Silver	Trace
Other Elements	None Detected.

Again the label on the can has the warning for "External Use Only" and the suggestion, "To hasten results, breath deeply, get at least eight hours of uninterrupted sleep in twenty-four, exercise in moderation and think only clean and constructive thoughts. Also, drink one pint of water one hour before each meal, none at meal time or for two hours thereafter; none before retiring." The label also contains the statement - "This Product is Never Sold. It is Given, as a Token of Love and Appreciation, to Those Who contribute to our Radio Ministry." (Ex. H, page 5)

The open letter ends with the statement:

"At the end of this letter, I am printing a voucher that you can use in sending help. Your gift will be to ZZYZX Community Church, not to me. If it is sent to me, much of it would have to go for taxes, so please fill out the voucher and send as much as God makes possible. I am not asking for a pledge for a year or longer. This is an emergency needed right now.

"Perhaps I have made an awkward presentation to you, but if I have, God will smooth it over so you will understand. We simply cannot let this beautiful place to to the enemy and become leased out as a night club, golf club or any other type of worldly place. God has honored our efforts all these years and I believe He is just letting this happen as sort of a test, to see if our faith is founded on the Rock, Christ Jesus. With your help and prayers and His blessing, we shall continue our dedicated work among His children."

This was followed by a gift voucher and a contribution voucher worded as follows:

A - GIFT VOUCHER Amount \$

I have read Brother Springer's letter explaining the need to prevent the U.S. Land Office from taking ZZYZX Mineral Springs. You will find enclosed my gift to ZZYZX Community Church, Helen Springer, Treasurer. God helping me, I will send another gift next month. Use this gift to save ZZYZX Mineral Springs and to spread the Gospel of Jesus, our Savior.

Name \_\_\_\_\_

Street and Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

MY FAVORITE RADIO STATION FOR GOSPEL PROGRAMS IS \_\_\_\_\_

B - CONTRIBUTION VOUCHER For above Order \$ \_\_\_\_\_

Kindly ship the products I have circled in the order blank above. You will find my contribution enclosed and know that we will be praying for God's blessing on your work at ZZYZX Mineral Springs. I can use \_\_\_\_\_ additional copies of this letter to give to my friends. We must save ZZYZX Mineral Springs from the Liquor Monopoly. The desert will blossom like a rose.

Name \_\_\_\_\_

Street and Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

MY FAVORITE RADIO STATION FOR GOSPEL PROGRAMS IS \_\_\_\_\_

Dr. Springer testified that his buildings are made of concrete and steel and are 100% fireproof. In the motel there are 80 beds and he "will accept whatever God makes possible" (Tr. 374). At the time of the last hearing one-third of the people at the motel were not paying a cent. He has never taken a collection but "somehow or other the Lord supports us" (Tr. 375). Dr. Springer will take anybody as long as they leave alcoholic beverages alone and conduct themselves properly. At one time he offered to turn back the property to the Bureau of Land Management provided they would promise to feed the people and carry through the traditions he has started (Tr. 376).

In describing his radio broadcasting he stated that it was a natural entry to people who are interested in health and religion. The people can come to ZZYZX and enjoy the three concrete pools heated to 75 degrees, 85 degrees, and 100 degrees respectively. The water is naturally 72 degrees. Crystals are not added to the pools but can be added to tubs for a richer mineral content. He believes that the minerals open up the sweat glands of the body and eliminates waste products which the kidneys cannot handle. There are happy people at ZZYZX who are surrounded by happy people. They all get plenty of sunshine and the right food. He believes that 50% of the improvement in health is the result of "Suggestotherapy" (Tr. 379). Everything that he has is given away. He stated that we do not "tell them they are free. We tell them this. If you have need for this product or if your doctor has recommended it, then we ask and say Thank God for a gift I am about to receive, and let him tell you whether or not he feels you should drop a contribution . . ." (Tr. 381) The contributions are made in part to Dr. Curtis Howe Springer Foundation and to the ZZYZX Community Church. In 1968 alone the contributions amounted to three quarters of a million dollars (Tr. 296).

Through the years Dr. Springer has received many thousands of testimonials praising him for his work (Tr. 314). Six of the testimonials were received in evidence (Ex. 0-1 through 6). These documents end:

(1) "May God bless you and keep you strong" - from Sarasota, Florida; (2) "Yours in Christ" - from Flint, Michigan; (3) "May God bless you richly and supply your every need" - from Angelica, N.Y.; (4) "Enclosed find a contribution of \$20 for your work" - from Waverly, Iowa; (5) "Still praying that God's will be done and you win all in the end" - from Waco, Texas; and (6) "I want to see you as I pray for you and the Lady your wife - would also like to get what can help toward rheumatic beginnings and its associated sickness - yours in Christ" - from Chicago, Ill.

The contestees also referred to gold and silver as being found within the group of claims. At one time Dr. Springer and his son recovered approximately two pounds of black sand from the bottom of a well 12 feet from the surface. This well is on either Claim 4 or 7 (Tr. 354). Another sample was taken from a site near a pigsty on the boundary between Claims 6 and 7. The samples were assayed and the results were \$9.80 and \$2.10 in gold per ton (Ex. H, page 8). He did not know whether these values were the result of a fire assay or assay by amalgamation.

Earl Westerfeld, the chemist, testified that he has developed a new method of fire assay for placer material through an electrolysis process which is showing astonishing results. He assayed material from Quincy, California which ran \$1500 a ton when assayed by his new method. It had previously assayed \$20 a ton by the old method. He was given 2 rock samples by Mrs. Root (Ex. B and C) and assayed them by the standard fire assay and by his new process. The results from the standard fire assay were \$67.20 and \$28.10 per ton in gold and silver and from his new process \$78.72 and \$125.00 per ton in gold and silver. Mr. Westerfeld suggested that the ore should be crushed, concentrated at least 20 to 1, and smelted. He pointed out that 100 tons of \$28 ore if concentrated to 5 tons would be worth \$2800. He estimated the cost of concentrating the material to be \$10 to \$12 a ton and the cost of smelting \$40 to \$50 a ton. Mr. Westerfeld did not know where the samples came from (Tr. 95-150).

Mrs. Helen Springer, a contestee and the wife of Dr. Springer, testified that she has been living at ZZZZX since 1944. They originally went on the land to find something in the soil or in the rocks which would help them stay on the property to do the other good work they had in mind and wanted to accomplish. She secured a rock sample from Hank Miller who chipped it off a boulder lying near a white post where they are putting their new buildings. The samples assayed by Mr. Westerfeld were broken off this rock. Although they have recovered no gold or silver from the claims, they have been using the mineral water and shipping both mineral crystals and clay. She believes the crystals and clay are minerals because they are composed of minerals (Tr. 150-177).

In addition Dr. Springer claimed that there was a valuable deposit of sand and gravel on the western portion of the group of claims. The parties were in agreement that there is a massive deposit of sand and gravel along the base of Soda Lake Mountains, that it is hard and usable for construction purposes, including concrete aggregate, and that it was used for the construction of the buildings at ZZYZX. Dr. Springer testified that he let the State Highway Department take the sand and gravel from the claims and that he is willing to let the County Road Department or any individual use the material free of charge. Also a number of friends in Baker have used his sand and gravel. When asked how many tons he had sold he stated "I don't charge for those things" and "Good Lord - we are not interested in money." (Tr. 361)

Stuart Ingram, a mining engineer, was on the claims a short time before the hearing, and he verified that there was a massive deposit of sand and gravel. He agreed that the deposit could be used for construction purposes (Tr. 251-283).

On rebuttal Mr. Cruskie testified he was on the group of claims with Dr. Springer with the intention of sampling cuts that Dr. Springer had agreed to excavate. Dr. Springer did not excavate the cuts. He told Mr. Cruskie that the values were within six inches of the surface on the lake bed and that it was not necessary to disturb the bed by cutting into it. Mr. Cruskie was taken to the site where Hank Miller had picked up the material which was assayed by Earl Westerfeld. It was from the center of Claim 3 where there is nothing but loose boulders (Ex. 18). The sample was lode material taken from one of the loose boulders (Tr. 383-390). Also he testified that sand and gravel similar to that found on the claims is widespread throughout the area and can be found at the base of many nearby mountains (Tr. 395).

#### Applicable Legal Principles

The mining law requires the discovery of a valuable mineral deposit to validate a mining claim. Although the law does not define discovery, the Interior Board of Land Appeals recently summarized the tests for determining whether a discovery has been made in United States v. William J. Bartels, Sr., Et al., 6 IBLA 124 (June 5, 1972). Here the Board held:

"(W)here minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met." Castle v. Womble, 19 L.D. 455 (1894); See e.g., United States v. Bryan Gould, A-30990 (May 7, 1969); United States v. Lucille Lundy, A-30724 (June 30, 1967); United States v. Kenneth O. Watkins and Harold E. L. Barton, A-30659 (October 19, 1967).

Approval to this rule has been given by the Courts on many occasions. See e.g., Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Company, 371 U.S. 334 (1963); United States v. Coleman, 390 U.S. 599 (1968). And where the location is of minerals in a lode or vein, '(T)here must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral deposit; and the two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine.' Jefferson-Montana Copper Mines Co., 41 L.D. 320 (1912).

\* \* \* \* \*

"Through a long line of decisions, the Department has distinguished between 'exploration' and 'development' as they relate to 'discovery' under the mining laws. The Department has held that the showing of mineralization which will justify further exploration may not be adequate to warrant development of a mining claim and that it is only when it can be said that a prudent man would be justified in expending his means in the development of a mineral deposit that a discovery has been made. See e.g., United States v. Laura Duvall and Clifford F. Russell, 65 I.D. 458 (1958); United States v. Clyde R. Altman and Charles M. Russell, 68 I.D. 235 (1961); United States v. Ford M. Converse, 72 I.D. 141 (1965), sustained in Converse v. Udall, 399 F. 2d 616 (9 Circ. 1968), cert. denied, 89 S. Ct. 635 (1969); United States v. Kenneth O. Watkins and Harold E. L. Barton, supra; United States v. Lucille Lundy, supra."

And in United States v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971) the Board considered the validity of a discovery of sand and gravel. Here the Board held:

"This test, the prudent man rule, has been refined to require a showing that the mineral in question can be extracted, removed, and presently marketed at a profit, the so-called marketability test. United States v. Coleman, supra. This present marketability can be demonstrated by a favorable showing as to such factors as the accessibility of the deposit, bona fides in development, proximity to market, and the existence of a present demand. . . . Palmer v. Dredge Corporation, supra note 3; Foster v. Seaton, 271 F. 2d 836 (D.C. Cir. 1959); Osborne v. Hammitt, Civil No. 414 (D. Nev., August 19, 1964)."

The contestant has the initial responsibility of presenting sufficient evidence to establish a prima facie case in support of its allegation that there has not been a discovery of a valuable mineral deposit. Thereafter the burden shifts to the contestees to establish by a preponderance of the evidence that there has been a discovery of a valuable mineral deposit on each claim. Foster v. Seaton, 271 F. 2d 836 (D.C. Cir. 1959).

#### Findings and Conclusions

The contestant presented a prima facie case that there was not a discovery of a valuable mineral deposit on any one of the claims through the testimony of a mining engineer. He was on the claims both alone and with the contestees. He examined the materials exposed and available for examination. He also secured a U.S. Geological Survey report containing drill logs for holes dug in Soda Lake. His conclusion was that the exposed minerals were not sufficiently valuable to satisfy the prudent man or marketability rule for a discovery. It thus became the burden of the contestees to establish by a preponderance of evidence that there was a discovery of a valuable mineral deposit on each claim.

Dr. Springer is a person with considerable zeal and personal magnetism. He has located 12,800 acres of public land under the mining laws in the California desert and on the land he has constructed a multimillion dollar health spa and resort. Through his ministry of the air he has access to a great many people and offers to send various products which he feels will contribute to the individual's health and well-being. With each gift he encourages contributions. He also invites individuals to stay in his resort without charge but again his guests are encouraged to make contributions either to the Dr. Curtis H. Springer Foundation or to the ZZYZX Community Church. It was with these contributions that he was able to construct the multimillion dollar resort.

Dr. Springer feels that by retaining the public lands he can keep people who drink alcoholic beverages and other undesirables off the land and can manage it more successfully than the Bureau of Land Management. Several times during the course of the hearing he referred to the fact that people who drink are barred from ZZYZX. He has offered to return the area to the Bureau of Land Management if the Bureau would carry out his plans and objectives.

His appeal is understandable. Anyone in need of spiritual, mental, or physical advice can go to his resort free of charge for an indefinite visit. While at the resort the guest can utilize the facilities, eat good food, get plenty of rest, and sunshine, take mineral baths, enjoy the fellowship of friends, and obtain spiritual and physical advice which Dr. Springer appears willing to give. A satisfied guest can then make a tax deductible contribution to the Springer Foundation or the Community Church. Dr. Springer believes he is carrying out the will of God and helping "God's children." From the amount of the contributions made to him over the years it is certainly obvious that a great many people have confidence in him. But whether his activity on the claims is characterized as

evangelism or something else is not the issue here. The only issue before this tribunal is whether Dr. Springer and his associates have made a discovery of a valuable mineral deposit on any one of the claims. They assert that the valuable minerals are salt crystals, mineralized clay, gold, silver, sand, and gravel.

The evidence on behalf of the contestees regarding the salt crystals is self-defeating. The Smith-Emery analysis disclosed that the crystals are silicates of sodium. Although Dr. Springer has no medical degree, he purports to be knowledgeable in the field of medicine. He believes that when the crystals are used as a bathing salt, they stimulate the sweat glands of the body which helps in the removal of waste which the kidneys are unable to handle, and that for this reason they are valuable. If this is true and the crystals do in fact constitute a valuable deposit, the crystals cannot be located. They can only be leased under the Act of February 25, 1920, 30 U.S.C. § 181 *et seq.*, (1970). A similar problem is raised with the mineral springs. If the mineral springs have any medicinal or curative properties, and Dr. Springer appeared confident that they do have, the springs and the subdivisions in which they are located were withdrawn from entry by Executive Order No. 5389 of July 7, 1930, 43 CFR 2311.03(b)(1). This was 14 years before the claims were located.

The analysis of the silt used for mud packs discloses that it has the constituent minerals of ordinary clay. If it is ordinary clay it is not a mineral subject to location under the mining law. Mr. Cruskie called the clay "dirt." On the other hand Dr. Springer believes that it is not ordinary clay and that it has some medical or curative value. Over the years many people have visited the health resort and used the clay as well as the other Springer products. Again from the amount of the contributions it appears that many were well satisfied. But there is no way from the record to affix a specific value to any one of the many products and services available at the resort. In the absence of more persuasive evidence regarding the value of this particular clay, it must be considered an ordinary clay not subject to location under the mining laws.

The gold and silver found on the group of claims were within two rock samples of lode material taken from a piece of float rock which had eroded down from the mountains onto a placer claim. There was no serious contention that this mineralization was in the form of a deposit which could be developed into a profitable operation. A sample of black sand taken in 1948 from the 12-foot level of a well on Claim 4 assayed \$9.80 per ton in gold. Dr. Springer did not know how this sample was assayed. If the sample was fire assayed, the value shown does not represent recoverable value. If the sample was assayed by amalgamation, it represents sufficient value to induce further prospecting and exploration to determine whether there is a deposit of sufficient magnitude to induce development. In the past 23 years Dr. Springer did not prospect or explore this area further to determine whether there was a potentially valuable deposit of black sand. Apparently he was not impressed. In any case one sample showing this value does not satisfy the prudent man rule.

The final mineral claimed to be valuable by the contestees is the sand and gravel. This material is found in a massive deposit one half mile wide and four miles long stretching along the western tier of claims. The contestees have given the material away to highway contractors for road construction and to friends and neighbors for construction purposes, and they have used the material as aggregate in the construction of their resort. Regardless of how well intentioned a person is or how much he wishes to be of service to humanity, there is nothing in the mining law which authorizes the location of a mining claim for the construction and use of a health resort. Thus the use of the sand and gravel for the construction of the buildings and other facilities at the resort constitute a trespass. And the giving away of quantities of the material for occasional use for highway construction and by friends or neighbors does not satisfy the marketability rule of the Coleman decision.

#### Final Conclusion

The Buddie No. One lode mining claim, and the ZZYZX Claims Nos. Two, Three, Four, Five, Six, Seven, Eighteen, Nineteen, and Twenty placer claims are declared null and void for the lack of a discovery of a valuable mineral deposit.

#### Appeal

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of January 1, 1972). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal. The adverse party to be served with the notice of appeal and other documents is the Regional Solicitor, whose address appears below.

Graydon E. Holt  
Hearing Examiner

Enclosure: Appeal Information

#### Distribution

Regional Solicitor, U.S. Dept. of the Interior, 7759 Federal Bldg.,  
300 North Los Angeles Street, Los Angeles, Calif. 90012 (Cert.)  
George W. Nilsson, Attorney at Law, 1131 Petroleum Bldg., 714 West  
Olympic Boulevard, Los Angeles, Calif. 90015 (Cert.)  
C. H. Springer, Box 1, Baker, Calif. 92309  
Helen LeGerda Springer, Box 1, Baker, Calif. 92309  
Marilou Springer Holcomb, 4528 W. Charleston Blvd., Las Vegas, Nevada  
89102

Standard Distribution

