Editor's note: Appealed -- aff'd, Civ. No. 75-465 (D.Or. July 5, 1978)

UNITED STATES
v.
KEN ALEXANDER AND KENNETH D. ALEXANDER

IBLA 74-172 Decided November 4, 1974

Appeal from decision of Chief Administrative Law Judge L. K. Luoma, declaring valid the Boulder Gorge Placer Mining Claim No. 1 involved in Oregon Contest 8197.

Reversed.

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

   In a mining contest a matter not charged in the complaint can be used as a ground to find a claim invalid where it was raised at the hearing and the contestee did not object at that time.

2. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Determination of Validity

   When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

3. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Determination of Validity

   The burden to establish the existence and extent of a mineral deposit on a mining claim is not on the Government, but is part

of the ultimate burden of proof borne by the claimant.

4. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Determination of Validity--Mining Claims: Discovery

   In the examination of a mining claim to determine its validity, government mineral examiners need only to examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work or to explore beyond the claimant's workings.

5. Mining Claims: Determination of Validity--Mining Claims: Discovery

   It is only the intrinsic value of the raw mineral exposed or removed from a mining claim that is considered in a validity determination; value added to the mineral by reason of manufacture or design must be disregarded.

6. Mining Claim: Determination of Validity--Mining Claims: Discovery

   Where a mining claim is worked by the mineral claimant on a "do it yourself" basis, the value of the claimant's labor must be considered in determining whether a profitable venture has been established.

7. Mining Claim: Determination of Validity--Mining Claim: Discovery

   The prudent man test is objective, not subjective, and is not met by alleging that the mineral claimant derives a simple livelihood from his one-man operation of the contested and other mining claims.

APPEARANCES: Jim Kauble, Esq., Office of the General Counsel, U.S. Department of Agriculture, Portland, Oregon, for the Forest Service;

H. B. Johnson, Esq., of Jackson & Johnson, Baker, Oregon, for the contestees.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Forest Service has appealed from the Chief Administrative Law Judge's decision of November 21, 1973, declaring the Boulder Gorge Placer Mining Claim No. 1 to be valid.

On July 26, 1971, a contest complaint was initiated against the Boulder Gorge Placer Mining Claim No. 1 by the Bureau of Land Management at the request of the Forest Service, U.S. Department of Agriculture. The complaint charged that (1) minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery, and (2) the land within the placer claim is nonmineral in character. A timely answer was filed by the contestees denying the charges. A hearing in the matter was held at Baker, Oregon, on May 15, 1973.

Evidence adduced at the hearing discloses that the claim was located in April 1953, and was purchased in 1968 by the contestees from a Mr. Coombs. The original locator was Clarence Demarey. The claim straddles the Powder River southwest of Baker, Oregon. The lands covered by the claim, among other lands, were withdrawn from prospecting, location, entry and purchase under the mining laws by Public Land Order 3230 of September 11, 1963, published in 28 Federal Register 10158 on September 17, 1963 (Exh. 5). Farther up the valley, around 1914 and again in the early 1940's there was a history of gold dredging operations. No production figures are available. To the west, upstream one-half mile, is a patented gold placer claim.

Lloyd E. Holmgren, United States Forest Service mining engineer, explained that he was familiar with the Boulder Gorge placer claim as he examined it on June 10, 1969, in the company of Forest Service employee Elton Thomas, Contestee Ken Alexander, Robert Smith, and Charles Griffin. He observed a few small recent excavations and at the lower end of the claim some old workings apparently dug some years past. Holmgren sampled the three places indicated by Mr. Alexander as the points of discovery. From the assay report of February 3, 1971, Mr. Holmgren computed the gold values in his samples KA-1, KA-2 and KA-3. At $35 per ounce, the value of gold at the date of withdrawal, the samples were valued at 49 cents, 39 cents, and 30 cents per cubic yard, respectively. At $100 per ounce, the value of gold at the time of the hearing, the samples were valued at $1.40, $1.13, and 87 cents per cubic yard, respectively. Holmgren's evaluation of sample KA-1 was based on a sample, according to his notes, containing one cubic yard of gravel. He had no

recall at the time of the hearing of the volume in the sample. Holmgren admitted that, in the event one-half cubic yard was taken for sample KA-1, the two values he arrived at for sample KA-1 would be double.

Because of large boulders and the limited amount of gravel, Holmgren was of the opinion that the claim would necessarily have to be mined by hand methods, and that six cubic yards per day would be the maximum that the average man could handle by hand. He added that six cubic yards per day would not bring a going wage. He stated water is available the year round. He estimated there are 4 to 4 1/2 acres of material available for mining (Tr. 12).

It was Holmgren's opinion, based on his experience, training and examination of the claim, that a prudent man would not be justified in the further expenditure of his time and means in an effort to develop a paying mine. Even assuming sample KA-1 consisted of one-half cubic yard of material, he stated his opinion regarding a prudent man would not change.

Contestee Ken Alexander testified he acquired the Boulder Gorge claim in 1968. For the past several years he has made his living from mining activities. He also operates five other unpatented mining claims, the O'Ferrells. The latter provides him with the most gold, if he hits a pocket. The cabin on the Boulder Gorge claim is his home. There is no cabin on his other claims. He tries to send some money to his son, Kenneth D. Alexander, the other contestee, who is attending college under the G. I. Bill. His son did not testify. He also testified that he is disabled by emphysema which limits his abilities and he cannot tolerate the city's polluted air.

Prior to 1972, Mr. Alexander did not keep separate records of the sales of gold obtained from the Boulder Gorge claim and the O'Ferrells claims, but he stated he did so in 1972. Two types of gold are obtained on the O'Ferrells. One is a poor grade of gold with a lot of silver in it. The other, the good gold, is in the form of nuggets. He manufactured jewelry with gold from the O'Ferrells and Boulder Gorge claims. He testified that in 1972 he realized $1,300 from the sale of gold from the Boulder Gorge claim. Of this, he derived $600 from the sale of jewelry he had fashioned and manufactured and from the sale of various tourist novelties and curios of his own creation, all made from gold obtained from the Boulder Gorge claim. He was unable to state the volume of gravel processed to obtain the gold he sold. He usually does not weigh the nuggets, but from the nuggets he has weighed and fashioned into jewelry, he found he was making around $1,900 an ounce. In 1972 he paid a man with a backhoe $240 to move boulders and stockpile gravel on the

contested claim. In 1972 he worked on his mining claims from the end of May to sometime in November, 5 hours a day, 5 days a week. He marked an "X" on Exhibit 4, a sketch of the claim, to show the point where the backhoe was used in 1972. That is a place other than the points sampled by Holmgren in 1969. It was Alexander's recollection that the amount of material used for Holmgren's sample KA-1 was one-half cubic yard. He stated that he did not know, but it was estimated by others, that there are 9 acres of gravel in the claim (Tr. 36).

Mr. Alexander testified his operation of his mining claim would be a long time proposition as he is not attempting to extract the gold as quickly as possible. He estimated that, if he were to purchase a backhoe and put in a trommel screen to process more material, he could make $2,600 to $2,800 a year from the claim. No mention was made of the cost or the amortization of such equipment.

Charles Griffin and Robert Smith, who were on the Boulder Gorge claim in 1969 when Holmgren made his examination and took samples, each testified that it was his recollection that the amount of material used in Holmgren's sample KA-1 was about one-half cubic yard.

The time-honored standard for a discovery of a valuable mineral deposit is the "prudent-man" test formulated in Castle v. Womble, 19 L.D. 455 (1894), which has been cited with approval by the Supreme Court of the United States for almost three-quarters of a century. Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); United States v. Coleman, 390 U.S. 599 (1968). It reads:

> [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.

The decision appealed from correctly stated the principle that:

> The validity of a mining claim which is located on land which is subsequently withdrawn from mineral entry must be determined as of the date of withdrawal as well as the date of determination. If the claim was not supported by a discovery of a valuable mineral deposit at the time of withdrawal, the land embraced in the claim would not be excepted from the effect of the withdrawal, and the

> claim could not thereafter become valid even though the value of the deposit subsequently increased due to change in the market value of the mineral. United States v. Henry, * * * [10 IBLA 195 (1973)] * * * at 199; United States v. Gunsight Mining Co., 5 IBLA 62 (1972).

The Judge found that the validity or invalidity of the Boulder Gorge claim would be determined only on the evidence relating to conditions as of the date of the hearing. He found the contestant did not allege in the complaint that the claim should be declared invalid for lack of discovery on September 11, 1963, the date of withdrawal, nor did it present any evidence in regard thereto.

The Judge also found there was no dispute that the claim contains gold, that there is sufficient gravel present for processing, and that water is plentiful. He further found there was disagreement between the parties as to the amount of material washed to obtain sample KA-1. He stated the real disagreement is over the interpretation of the prudent-man test. He pointed out that contestant's position is that regardless of the amount of material used for sample KA-1, the gold values are such that a man of ordinary prudence would not be justified in expending his labor and means to develop a valuable mine.

The Judge concluded that although the contestant has met its burden of establishing a prima facie case of lack of discovery on the date of contest, the contestees have overcome such showing and have established by a preponderance of evidence that there is a discovery of a valuable mineral deposit on the Boulder Gorge claim.

Appellant-contestant asserts that the Judge erred in finding that the validity of the claim as of September 11, 1963, the date of withdrawal, is not in issue. Appellant submits the complaint charged that minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery. In support of the sufficiency of this charge, appellant refers to United States v. Henry, supra. It pointed out that the contest complaint in Henry contained a general charge of invalidity like that in the instant case, and even though the complaint apparently made no reference to the fact that the land in the mining claims had been withdrawn, the Board of Land Appeals held that the validity of the claim must be tested as of the date of the withdrawal as well as of the date of the hearing. Appellant observed the Henry case was cited by both parties in their respective briefs to the Judge in this case and in turn by the Judge in his decision, for the rule that where a mining claim occupies land subsequently withdrawn from mineral location, the validity of the claim must be determined as of the date of withdrawal and as of the date of hearing.

Appellant also states that in the present case it is obvious the parties considered the validity of the Boulder Gorge claim as of the date of the withdrawal to be an issue in the case. It submits that evidence of the value of gold in 1963 and the withdrawal order (Exh. 5), were introduced at the hearing and were admitted in evidence without objection from the claimants. It asserts that claimants' attorney understood at the time of the hearing that the validity of the location on the date of the withdrawal was in issue and one of the reasons for challenging the claim was the area of the claim had been withdrawn. In support, appellant quotes the following exchange on cross-examination of Forest Service mining engineer Holmgren by contestees' attorney at page 21 of the hearing transcript:

> Q. [Contestees' attorney] Now, you have testified that this claim was located in 1953 and the recreation withdrawal apparently was in 1963?
>
> A. [Holmgren] That's right.
>
> Q. Assuming that that was discovered in a valid location, the Boulder Gorge claim, would the owner still be able to operate that claim despite the withdrawal?
>
> A. Yes, he would, because all withdrawals are subject to valid existing rights.
>
> Q. Now, you said that that was one of the reasons that the Forest Service challenged the validity. Was there any other reason?

Appellant then refers to the discussion in contestees' posthearing answering brief of the Henry case in regard to the effect of the withdrawal and contends the brief shows that the contestees considered the validity of the Boulder Gorge claim as of the date of withdrawal an issue in the case.

Finally, with respect to this contention, appellant submits that an issue is properly raised where the contestee examined and cross-examined witnesses on it and the record demonstrates that the contestee was aware the issue was important to the resolution of the contest, and he has not demonstrated that he has been prejudiced. In support appellant cites United States v. Harold Ladd Pierce, 75 I.D. 270 (1968).

The second error asserted by appellant is the Judge's failure to find that the contestant proved a prima facie case of invalidity

based upon a lack of discovery on September 11, 1963, the date the land in the claim was withdrawn from mineral entry.

In support of this contention appellant relies on the testimony of the Forest Service mining engineer, who examined the subject mining claim on June 10, 1969, in the following exchange from page 7 of the hearing transcript:

> Q. [Contestant's attorney] Has there been any history of production in this area where the claim is located?
>
> A. [Holmgren] Not in the -- there's not in the -- in the exact location of the claim, but further up the valley, in the Sumter [sic] Valley, was dredged extensively in two different periods, the period of 1914 and again in the 1940's, the early 1940's.
>
> The total production of those dredging operations is not known. There's no production figures available.
>
> Apparently the operation met with some success, because it continued, as I say, in two different periods over a period of years.
>
> Q. What evidence of mineral activity or mining did you observe when you were on the claim?
>
> A. Mr. Alexander had made a few small excavations, and at the lower end of the claim there's some small old, old workings that apparently were dug some years past. And I sampled those points that Mr. Alexander indicated as being his points of discovery.

Appellant urges that from the foregoing it is clear that no mineral discovery existed on this claim on the date of withdrawal. It argues that despite contestees' awareness of the necessity to prove validity as of the date of withdrawal, no evidence of a discovery on the date of withdrawal was offered by contestees to overcome the contestant's prima facie case.

The third error appellant assigns to the decision of the Judge is in finding that the contestees have established by a preponderance of the evidence that there was a discovery of a valuable mineral deposit on the Boulder Gorge claim at the time of the hearing. Appellant asserts the Judge's order declaring the Boulder Gorge placer claim valid is based upon a finding that one of the contestees is presently deriving a profit from the sale of the gold from the claim. It contends this finding is unsupported by the evidence in the case. Appellant's reasoning is as follows:

The claimant, Ken Alexander, testified that in the year 1972, the only year for which he had complete records, he sold gold for $709 and approximately $600 worth of jewelry manufactured from gold taken from the Boulder Gorge claim (tr. 48, 49). He paid a backhoe operator $240 to scoop up material for processing (tr. 48) which would result in income from 1972 sales of gold and jewelry of $1,069. If this amount had been pure profit from the sale of gold alone from the claim, the claim might well be valid. However, when the cost of labor is subtracted from this figure and the value created by manufacturing the gold into jewelry is taken into account, it will be seen that the operation of this claim would result in a net economic loss which would prohibit a man of ordinary prudence from operating it.

Mr. Alexander testified that he worked from the end of May until some time in November in 1972 on the claim (tr. 47). Some weeks he worked 25 hours and some weeks 50 hours (tr. 52). There were 21 complete weeks and four additional weekdays from the end of May until the first of November in 1972. Twenty-one weeks at 25 hours per week represents 525 hours. If only one of those weeks was a 50-hour week, the total would be at least 550 hours. According to Mr. Alexander, hired labor costs $2 an hour, or in some cases, a flat $18 to $20 a day (tr. 50). Five hundred fifty hours labor at $2 an hour wages costs $1,100.

Even before an adjustment is made to account for the sale of jewelry, it is apparent that a net economic loss resulted from Mr. Alexander's operations on the Boulder Gorge claim in 1972. When the $600 jewelry sales are reduced to show the actual value of the gold used by Mr. Alexander in manufacturing the jewelry a far greater loss is apparent. According to Mr. Alexander's testimony on pages 30, 31 and 32, he flattened nuggets into various shapes which were then sold in the form of lockets and tie tacks. Although he doesn't usually weigh them, he has found that the nuggets he has weighed have been selling at around $1,900 an ounce. Six hundred dollars worth of jewelry at this rate would represent slightly over one-third of an ounce of gold. Obviously the actual value of the gold used by Mr. Alexander to manufacture the jewelry he sells is far less than $600.

Appellant's final arguments that the Boulder Gorge Placer Mining Claim No. 1 should be invalidated are (1) that the contestant established a prima facie case of lack of discovery of a valuable mineral deposit, both on the date of the hearing and as of the date the area wherein the claim is situated was withdrawn from mineral entry, (2) the claimants offered no evidence to overcome the contestant's prima facie case with regard to the lack of discovery on the date of withdrawal, (3) the claimants' evidence with respect to the value of the claim as of the date of the hearing clearly proves that the claim cannot be operated at a profit, (4) the prudent man test is objective, not subjective, United States v. Harper, 8 IBLA 357, and (5) the fact that a mining claimant is willing to operate a claim on a "do it yourself" basis and expend his time and money for a meager return which would not result in a profit in the economic sense does not warrant the conclusion that a person of ordinary prudence would be justified in so doing.

One of the difficulties with the decision below is the Judge's failure to make a determination as to whether a valuable mineral deposit was exposed within the limits of the claim on the date the land embraced by the claim was withdrawn from mineral location and entry. The reason for the omission of such a determination, according to the decision below, was the contest complaint did not specifically allege the claim should be declared invalid for lack of a discovery on the date of withdrawal.

The charge of no discovery in the complaint, as set forth above, is a standard or general charge that has long been used in mining contests. United States v. Clark, 70 I.D. 455, 456 (1963).

[1] In a mining contest a matter not charged in the complaint can be used as a ground to find a claim invalid where it is raised at the hearing and the contestee does not object to it at the hearing. United States v. Northwest Mine and Milling Inc., 11 IBLA 271 (1973).

The Forest Service mineral examiner stated he had compared the legal description in the withdrawal order (Exh. 5), with the legal description of the Boulder Gorge claim and testified that the claim is within the withdrawn area (Tr. 19). He prepared a sketch map which depicts the claim and its attitude in relation to the center of sec. 29, T. 10 S., R. 29 E., W.M., wherein the claim is situated (Tr. 8, Exh. 4). No objection was made at the hearing by the contestees to such testimony and exhibits.

Further, witness Holmgren on cross-examination responded to the question of the effect of the withdrawal, that all withdrawals are "subject to existing valid rights," and that assuming there was a valid discovery at the time of withdrawal, a mineral claimant

could continue to operate his claim despite the withdrawal (Tr. 21). No objection followed his explanation.

Thus the matter of discovery at the date of withdrawal was raised as an issue at the hearing; contestees questioned the contestants' witness concerning it and its effect on a mining claim. Contestees did not object. Therefore, we conclude that contestees were aware at the hearing that it was an issue and they were not misled or prejudiced in any way. United States v. Harold Ladd Pierce, supra; United States v. Stewart, 1 IBLA 161 (1970).

Since the validity of the Boulder Gorge claim on the date of withdrawal was clearly in issue at the hearing and a matter for determination by the Judge, his finding to the contrary is set aside.

[2] We turn to the question of whether contestant made a prima facie case of no discovery as of the date of withdrawal of the land in the mining claim from mineral location. When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. United States v. Horn, 16 IBLA 211 (1974); United States v. King, 15 IBLA 210 (1974).

A copy of the withdrawal order as it appeared in the Federal Register of September 17, 1963, was admitted in evidence without objection. The Forest Service mineral examiner, who examined and sampled the claim and submitted his samples for assay, evaluated the assay results on the basis of gold at $35 an ounce and at $100 per ounce. He placed those figures on the assay report (Exh. 6). The price of gold in 1963, of which official notice is taken, was $35 per ounce. According to the hearing record, the discounted London price of gold at the time of the hearing was $100 per ounce. This same witness testified, because there are large boulders on the claim and not enough gravel to amortize large equipment, the claim would necessarily have to be mined by hand methods which only permit the handling of a small amount of yardage daily, he was of the opinion that a prudent man would not be justified in expending his time and means in an effort to develop a paying mine (Tr. 11, 13). He further stated he would not change his opinion even if his sample KA-1 consisted of a half yard rather than a full yard, which would cause the dollar value of that sample to double (Tr. 15). In view of his testimony relating to the value of the samples at $35 and $100 per ounce coupled with the evidence of the withdrawal, we find that Holmgren's opinion as to lack of discovery of a valuable mineral deposit on the claim under the prudent man test was addressed to both the date of the withdrawal and the date of the hearing. Accordingly, we conclude that the contestant made a prima facie case of

no discovery as of the date of the withdrawal and we set aside the Judge's determination to the contrary.

Contestee Ken Alexander admitted that the Boulder Gorge Placer Mining Claim No. 1 was purchased by the contestees in 1968. This was five years after the land had been withdrawn from mineral location and entry. The Bureau of Land Management maintains an elaborate system of public records of the status of the public lands. One who fails to inspect the status of public land in which he is financially interested is negligent at his peril, as he is charged with knowledge of their content. James C. Forsling, 56 I.D. 281, 285-86 (1938). Contestees presented nothing with regard to an exposure of a valuable mineral deposit on the claim at the date of withdrawal. The testimony of Ken Alexander related essentially to the year 1972, the year he stated he began keeping records. Obviously, he had no knowledge of a discovery of a valuable mineral deposit within the limits of the claim at the date of withdrawal, otherwise, he would have testified in that regard. We conclude that the contestees have failed to overcome, with a preponderance of evidence, the Government's prima facie case of no discovery on the date of withdrawal.

As already stated in an above-quoted portion from the Judge's decision, where a mining claim located on land subsequently withdrawn from mineral location and entry is not supported by a discovery of a valuable mineral deposit at the time the land is withdrawn, the land in the claim would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though a valuable mineral deposit was subsequently discovered thereon or the market value of the mineral had subsequently increased.

Accordingly, we declare the Boulder Gorge Placer Mining Claim No. 1 null and void by reason of lack of a discovery of a valuable mineral deposit within the limits of the claim on September 17, 1963, the date of withdrawal.

While the foregoing is dispositive of this case, nevertheless, we have considered and find erroneous, as explained infra, the Judge's determination that there was a discovery of a valuable mineral deposit on the Boulder Gorge claim at the time of the hearing.

[3] The record fails to disclose that the contestees overcame the contestant's prima facie case of no discovery at the time of the hearing. The mineral claimants have not shown the extent of the mineral deposit
within the limits of the claim. The burden to establish the existence and extent of a mineral deposit in a mining claim is not upon the Government, but is part of the ultimate burden

of proof borne by the mineral claimant under Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Zerwekh, 9 IBLA 172 (1973). Mr. Holmgren testified as to the three places pointed out to him for sampling in 1969 and the assay results. It was Holmgren's estimate, without measuring, that there is about 4 to 4 1/2 acres of gravel in the high bar ground, which he had not tested for depth (Tr. 12, 23). Alexander testified that in 1972 he processed gravel from a place not sampled by Holmgren. Based on the depth capacity of the backhoe used at that point, it was estimated that gravel was 12 or 13 feet deep. He also stated that, although he did not know, others estimated he had 9 acres of gravel on the bar (Tr. 36). Contestees presented no evidence of the depth of the gravel at various other points within the gravel area or of the gold values contained therein. Contestees failed to establish the extent of the deposit and, therefore, failed to demonstrate the potential of the claim.

[4] In the examination of a mining claim to determine its validity, Government mineral examiners need only to examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work or to explore beyond the claimant's working. United States v. Horn, supra.

We turn to the Judge's stated reasons for his determination of validity of the claim, which are:

> Contestee Ken Alexander is making a living from this claim and others he works. He is presently deriving a profit from the sale of gold from the Boulder Gorge claim. Objectively, it can be stated that a man of ordinary prudence would be justified in expending his labor and means to continue to develop this paying mine.

[5, 6] It is only the intrinsic value of the raw mineral exposed or removed from a claim that is considered in a validity determination; value added to the mineral by reason of manufacture or design must be disregarded, because it essentially reflects the skill and ingenuity of the artisan rather than the value of the mineral. Ken Alexander did not know how many yards of material he handled in 1972 on the Boulder Gorge claim to obtain the gold he stated he sold (Tr. 46). Nor did he know the weight of the gold used in the jewelry and curios he fashioned that year (Tr. 29). Consequently, the average value per cubic yard of material he handled cannot be determined. However, he testified he labored on the claim from 6 to 7 months to obtain that gold (Tr. 47-49). Where a mining claim is worked by the claimant on a "do it yourself" basis, the value of the claimant's labor must be considered in determining whether a profitable venture has been established. United States

v. White, 72 I.D. 522, 526 (1965), aff'd White v. Udall, 404 F.2d 334 (9th Cir. 1968). See United States v. King, supra.

[7] The validity of a mining claim must be based upon the mineralization within the limits of the claim in question. A discovery on one claim cannot enure to the benefit of another claim. United States v. Henrikson, 70 I.D. 212, 215 (1965), aff'd., Henrikson v. Udall, 229 F. Supp. 510 (D. Cal. 1964), aff'd., 350 F.2d 949 (9th Cir. 1965), cert. denied, 380 U.S. 940 (1966); United States v. Independent Quick Silver Co., 72 I.D. 367, 374 (1965). Mineral values obtained from several claims cannot be joined or consolidated to establish a discovery on one of them. Thus, the fact that Ken Alexander by reason of his unfortunate physical disability is willing to eke out a meager livelihood from the gold obtained from this and other claims he works is subjective. This is not a proper basis for finding the Boulder Gorge claim valid, as it falls short of meeting the "prudent man" test of discovery, which is objective. Moreover, a determination of validity of a mining claim cannot rest upon peculiar individual circumstances. United States v. Terry, 10 IBLA 158 (1973); United States v. Harper, 8 IBLA 357, 367 (1972).

We find that the contestees have not demonstrated that at the date of the hearing that minerals have been found within the limits the Boulder Gorge claim of such quantity and quality as would warrant a man of ordinary prudence in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Castle v. Womble, supra.

We are aware of the claimants' position. However, as it has not been shown that there was a discovery of a valuable mineral deposit within the limits of the claim either at the time the land was withdrawn from operation of the mining laws in 1963 or at the time of the hearing, we declare the Boulder Gorge placer mining claim null and void.

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 reversed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge