

UNITED STATES  
v.  
EMMETT C. HARDER

IBLA 79-96

Decided August 22, 1979

Appeal from decision of Administrative Law Judge Dean F. Ratzman declaring the Broken Bottle, the Broken Bottle No. 1, the Sadie Ruth H. lode mining claims, and a millsite claim (unnamed) null and void. Contest No. CA-4939

Affirmed.

1. Mining Claims: Discovery: Generally

Discovery of a valuable mineral deposit has been made where 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.

2. Administrative Procedure: Burden of Proof – Mining Claims: Contests – Mining Claims: Discovery: Generally

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed 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 a discovery has been made.

## 3. Administrative Procedure: Burden of Proof – Mining Claims: Discovery: Generally

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of validity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

## 4. Millsites: Determination of Validity

Where a millsite is located in conjunction with certain mining claims which are found to be invalid, and the millsite is not being used for any purpose associated with mining, the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid.

APPEARANCES: Robert D. Harder, Esq., San Diego, California, for appellant; John McMunn, Esq., Office of the Solicitor, U.S. Department of the Interior, San Francisco, California, for the Government.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Emmett C. Harder <sup>1/</sup> has appealed from a decision of Administrative Law Judge Dean F. Ratzman, dated October 26, 1978, declaring the Broken Bottle, the Broken Bottle No. 1, the Sadie Ruth H. lode claims, and a millsite claim (unnamed) null and void. The mining claims were so declared for lack of discovery of a valuable mineral deposit. The claims are located in and adjacent to the Death Valley Monument in secs. 21, 22, and 25, T. 23 S.R. 45 E., Mount Diablo meridian, Inyo County, California.

On April 11, 1978, the Bureau of Land Management (BLM), on behalf of the National Park Service, issued a complaint charging that there was not presently a discovery of a valuable mineral deposit on the lode claims and that the millsite was not being used for mining or milling purposes in connection with the lode claims, nor did it contain a quartz mill or reduction works.

---

<sup>1/</sup> Carl Ruona, originally a party in this contest for these same claims, did not appeal from Judge Ratzman's decision.

A hearing was held August 8, 1978, in Riverside, California. On the basis of the evidence adduced at this hearing the Judge determined that the contestant established a prima facie case of no discovery and that the contestee had failed to show by a preponderance of the evidence that a discovery existed.

[1, 2] We have reviewed the record in this case and the arguments advanced by the parties. The Judge's decision sets out a summary of the testimony, the pertinent evidence, and the applicable law. We are in agreement with the Judge's findings and conclusions and adopt his decision in its entirety as the decision of this Board. A copy is attached hereto.

Appellant argues, *inter alia*, that the Government failed to present a prima facie case with respect to the lode claims or the millsite, and that there was never any offer of proof that any examination was made of discovery points on the Broken Bottle No. 1 or the Sadie Ruth H. lode claims. Appellant makes much of the fact that the Government geologists, Robert T. Mitcham and Walter Gould, did not specifically examine these claims and take samples but merely walked over the claims. There is no merit in this argument.

[3] A prima facie case is established by the United States when a Government mineral examiner testifies that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit. United States v. McClurg, 31 IBLA 8, 11 (1977); United States v. Reynders, 26 IBLA 131, 134 (1976). Government mineral examiners are not required to perform discovery for claimants or to explore beyond a claimant's workings. United States v. Bechthold, 25 IBLA 77 (1976); United States v. Blomquist, 7 IBLA 351 (1972).

The record more than adequately demonstrates that the Government established its prima facie case. Appellant did not present sufficient probative evidence to controvert the Government's presentation.

Both Government mineral examiners visited and inspected the claims on several occasions and were accompanied by the contestees on at least one occasion when they took samples from a point where they were shown the main area of workings on the Broken Bottle. Gould was on the claims several times and sampled from what appellant determined was the best discovery point (Tr. 19). An assay report of this sample showed "minor gold and a little tungstenc indicating to Gould that "there wasn't material there to make an economic operation with that mine" (Tr. 25-26). Gould had walked over the other two lode claims on an inspection tour, but did not find any evidence of workings from which to take samples. He also testified he examined the millsite and found no structures, no mine dumps, and no mill or reduction works (Tr. 28).

Mitcham testified he examined the claims several times and took representative samples from workings on an audit on the Broken Bottle No. 1 while accompanied by Carl Ruona, one of the claimants (Tr. 44, 46).

He sampled all locations shown to him and described by Ruona as containing the claims' best workings (Tr. 46-50). All Mitcham's samples were taken by accepted professional methods, and all were assayed, revealing insignificant values. He concluded the claims lacked economic mineral values (Tr. 50-58).

[4] Mitcham also visited the millsite claim several times, finding that it was not being used for either mining or milling (Tr. 58-60). Appellant argues that the improved spring which he has developed on the site has been used in the past for purposes associated with mining. However, where a millsite is located in conjunction with certain mining claims which are held to be invalid, and the millsite is not being used for any purpose associated with mining, the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid. United States v. Highley, 30 IBLA 21 (1977).

It is quite clear from our review that little else could have been developed from a more extensive examination of the claims to establish that the claims were supported by any existing discoveries of valuable deposits. There was no indication that the claims were in current production or that there had been any substantial development over a period of 20 years (Tr. 27). There was no evidence of any workings other than on the Broken Bottle. The contestees did not offer any evidence of discovery points on the Broken Bottle No. 1 or the Sadie Ruth H. claims. Nor did they specifically show the Government's mineral examiners where samples should have been taken from those claims. They merely alluded to high grade values found elsewhere on the claims.

Accordingly, the Government's mineral examiners were not required to explore any further than they did. Their investigations and the test results of the assays provided ample basis for their forming expert opinion that no discovery had been made on the lode claims. The same investigations were equally sufficient for their conclusions concerning the millsite. There being no discovery on the primary claims, and no active qualifying use of the millsite, the millsite claim was also properly declared invalid. United States v. Tempest Mining Co., 40 IBLA 297 (1979); United States v. Parsons, 33 IBLA 326 (1978).

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.

Edward W. Stuebing  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Frederick Fishman  
Administrative Judge  
ATTACHMENTS:

October 26, 1978

United States of America, : Contest No. CA-4939  
:  
Contestant : Involving the Broken Bottle;  
: Broken Bottle No. 1; and Sadie  
v. : Ruth H Lode Mining Claims located  
: in Secs. 21 and 22 and (No Name)  
Emmett C. Harder and Carl Ruona, : Mill Site Claim located in Sec. 25,  
: all situated in protracted T.23 S.,  
Contestees : R. 45 E., M.D.M., Inyo County,  
: California

DECISION

Appearances: John McMunn, Attorney, Office of the Solicitor, San Francisco, California, for the  
Contestee

Robert D. Harder, Attorney, San Diego, California, for the Contestant

Before: Administrative Law Judge Ratzman

Mining Claims and Mill Site Declared Null and Void

At the request of the National Park Service, the California State Office, Bureau of Land Management (BLM), issued a complaint dated April 11, 1978, against three lode mining claims and a mill site claim, charging that:

A. There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery. (This charge is directed against the lode claims).

B. The land [within the boundaries of the mill site claim] is not being used or occupied distinctly or explicitly for mining or milling purposes in connection with an associated claim, nor does it contain a quartz mill or reduction works.

The Broken Bottle and Broken Bottle No. 1 claims were located in 1958. The Sadie Ruth H and (unnamed) mill site claims were located in 1968. The lode claims lie partly within the Death Valley National Monument. They are on steep slopes on Manley Peak. An adit 180 feet in length was excavated on the Broken Bottle Claim many years ago by proprietors of a claim known as the Mormon Mine.

In the last six years the contested claims have been examined by a geologist, Walter Gould, and a mining engineer, Robert Mitcham, employed by the National Park Service. Each has a degree in his vocational field from a recognized university level institution. Mr. Gould worked about 25 years for private mining concerns or as a consultant prior to his employment by the NPS in 1977. Mr. Mitcham worked 12 1/2 years in private industry as a mucker, miner and engineer before accepting a position with the Atomic Energy Commission. He worked for that agency for nine years, and transferred to the Bureau of Land Management, where he worked as a mining engineer for 7 1/2 years.

In 1977, mining claimant Harder dug out a portal which had been blocked. This made it possible for Mr. Gould to go underground into the 180 foot drift on the Broken Bottle claim. Tr. 19. At the end of that old drift Mr. Harder had put up a raise which extended approximately 45 feet. Mr. Gould testified that in 1977 the raise was inaccessible.

When he was asked for the best discovery on each claim, Mr. Harder showed the drift on the Broken Bottle – he also said that he had found high grade gold "up on the mountain," but he did not point out a specific location. Tr. 19. Mr. Gould cut a channel sample at the point that he understood was Mr. Harder's "best showing," and where he observed material that fluoresced a brilliant steel blue under a black light. Tr. 21, 33. On the basis of an assay (wet analysis method), Mr. Gould concluded that the sample contained "minor gold" and a little tungsten. In his opinion there was not "enough material there to make an economic operation with that (Broken Bottle) mine." Tr. 26. The veins that he observed pinched and swelled. In his opinion, the Broken bottle claim is deficient from the standpoint of quality and quantity of valuable minerals. He expressed the view that a prudent man would not work any of the three contested lode claims in the expectation that he would realize a profit. Tr. 29. He walked across the other two lode claims, but did not see any evidence of workings.

The mill site is located on the mountain at a lower elevation. Vegetation on the site indicated that there is a source of water. Tr. 28. Mr. Gould observed evidence of digging on the mill site, but there are no structures or mine dumps. It has no mill or reduction works. On the basis of his inspection he was unable to "see how it was being used." Tr. 28.

Upon cross-examination Mr. Gould testified that as a consultant he had examined a tungsten mine south of Kingman, Arizona, and had "worked with tungsten" in Nevada. Tr. 30. He acknowledged that he had taken only one sample on the contested claims.

The experience with tungsten of the other NPS witness, Mr. Mitcham, was in a mine in Korea, where he was the manager for eighteen months, and in an unsuccessful venture in Nevada. Tr. 37. He examined the contested properties in May 1973, when the mining claimants requested permission to build a road. Contestee Carl Ruona accompanied Mr. Mitcham when he made that examination.

In order to reach a market for material mined from the claims, it would be necessary to send it about 160 miles to Bishop. A twenty-mile segment of the route is unpaved. Tr. 44.

Mr. Gould reached the claims by helicopter, but in 1973 Mr. Mitcham walked up to them. He inspected the previously described 180-foot adit and 60-foot raise on the Broken Bottle claim. He asked Mr. Ruona for his best showings on the entire claim group, and the latter said that they were in the "Broken Bottle workings." Tr. 46. Mr. Mitcham sampled "two elevations up the raise." Tr. 47. He sampled the vein across the raise on both the east and west walls. This is a good practice, in his opinion, because it would represent the vein material that was removed when the raise was driven. He also took a sample across the back in the drift near the raise.

At one point Mr. Mitcham found that the vein was 2.1 feet wide on the average. At the other sampling location it was 3 feet wide on the average. The vein contained quartz stringers and intervening areas. Tr. 48. Mr. Mitcham did not use a black light in the raise, but he blacked lamped the samples before they were sent to the assayers. He found indications of occasional specks of scheelite.

The assay results for samples taken by Mr. Mitcham showed values in tungsten, gold and silver that he considers to be insignificant for economic operation. The structures that he observed on the Broken Bottle claim are too narrow, and they give a very low grade tungsten showing. Tr. 53. Taking into account that about one-half of the tungsten in the scheelite on the claims could be recovered, Mr. Mitcham testified that the total cost of mining and marketing the material on the claims would be more than six times the amount that would be obtained for minerals in that material. Tr. 56-58. He testified that there is no evidence of minerals on the Broken Bottle group of mining claims sufficient in quantity or quality to justify a prudent person in further expenditure of his labor and means with a reasonable prospect of successfully developing a valuable mine. Tr. 61.

Mr. Mitcham has inspected the mill site a number of times in the last five or six years. He saw no structures on the site. He observed a pipe in the ground at a point where there is a spring, but in his view the water was not being used to mill ore, to control dust, or for any other purpose in support of mining. Tr. 60. In his opinion the mill site claim is not being used distinctly for mining or milling purposes in connection with an associated claim, and it is not the site of a quartz mill or reduction works. Tr. 60.

In Mr. Mitcham's opinion if the ore on the claims "were .5 tungsten ore" there is sufficient material to operate on a marginal basis. He did not "obtain anywhere near that." Tr. 93. At some points in the drift the vein cannot be found. Tr. 95.

Mr. Mitcham drafted a special Use Permit issued in the summer of 1975 (Ex. N) which states in Condition 19:

"CONSTRUCTION PROHIBITED. No vehicle trails or roads may be constructed, nor buildings or structures built or erected. No additional construction of water works to impound, trap or direct water, and no ground may be disturbed on the mill site without first obtaining separate authorization from the [Monument] superintendent."

When he was asked about the requirement for authorization by the NPS, Mr. Mitcham reiterated his position that use of water on the mill site was not for mining or milling purposes. Tr. 88. The permit was issued after Mr. Mitcham had examined the claims, and its provisions reflected the position of the NPS administrators that the lode claims were not valid. Tr. 100.

Mr. Mitcham qualified his reference to veins on the Broken Bottle claim by explaining that he did not observe solid expanses of quartz in what he referred to as a vein – the veins contain numerous small stringers separated by decomposed material. Tr. 92. The presumption is that quartz stringers or the areas adjacent to such stringers carry tungsten, gold and silver values. At the locations where the veins pinch there is no place to cut a sample because there are no quartz stringers. Tr. 96, 98. Mr. Mitcham's samples were at places where the vein was wide, and the vein at the sampling locations was "as good as any place [he] saw in the mine." Tr. 97.

Mining claimant Emmett Harder testified that the NPS refused to cooperate with Harder and Ruona when they proposed to construct a road into the Broken Bottle claims. Tr. 103.

After they worked on the Broken Bottle claim in an area above the Mormon Mine tunnel, the claimants excavated and found that tunnel in 1968. Tr. 104. An assay by Eisenhauer Laboratories (May 2, 1968, Exhibit E) showed a tungsten oxide (WO<sub>3</sub>) content of 4.71%. That report was for material taken

from an ore body 400 feet above the portal to the old tunnel. It was from a pocket of high grade ore described by Mr. Harder as a "terribly rich showing," in a vein that was about three feet wide. Tr. 105. He asserted that tungsten from a two foot wide exposure at another point above the old tunnel contained "2.7 scheelite." He is positive that his sampling point above the tunnel is within the boundaries of the Broken Bottle claim. Tr. 108.

Exhibit F is a hand written "Assay Report" dated November 8, 1968, signed by E. D. Cheney. Mr. Harder provided information as to that document, which indicates that Mr. Cheney assayed two samples. Mr. Harder stated that the material came from 2,000 pounds of ore removed from the adit (tunnel) level. It was sloped down from the roof at a location where the ore body was enriched. Tr. 124. In his assay work, Mr. Cheney used a gravitational process. Tr. 111. For gold, the Cheney report states "Head's 1.5 oz." "Rock 2 oz."; for silver "Head's Trace" "Rock 2 oz."; for tungsten "Heads 1 oz." "Rock 0".

In 1977, Mr. Harder delivered approximately 2,400 pounds of material from the Broken Bottle claim to Mr. Charles W. Johnson, General Manager of Cal-Pacific Corporation. The material was a portion of 6,000 pounds that had been excavated in the raise which had been put up by the claimants in the long adit. Tr. 115. Mr. Johnson's testimony concerning his testing of that material will be summarized in this decision. Comstock Star Mining Company of Salt Lake City, paid \$600 for 3,500 pounds of the 6,000 that had been excavated, and took it away in a truck. Tr. 116.

The mining claimants also obtained a semi-quantitative spectrographic analysis of a sample cut in a rich area in the section of the sub-level that was pointed out to Mr. Gould. Tr. 117. The report on that analysis is Exhibit K. Because that type of analysis is generally regarded as unreliable from the standpoint of the quantities of minerals in a sample, it will not be discussed further.

The mill site was located on the basis of practical considerations. Mr. Harder pointed out that it is close to the road, and has underlying water that was developed by the contestees. They have used the water for pack animals and in the utilization of a portable mill and crusher. Tr. 120.

Upon cross-examination, Mr. Harder explained that he is a specialist in explosives and has worked in several mining operations and owned his own company. He relies upon experts for advice relating to geological matters. Tr. 123.

It would be possible to construct a road into the contested claims on lands that are not within the boundaries of the monument, but this would entail a great deal of additional expense. Tr. 131. The most practical route would pass through the monument to some extent. Tr. 129, 132.

In the last ten years the contestees have removed approximately six or seven tons of material from the Broken Bottle claim. Tr. 137.

A witness for the contestee, Mr. Clair Kunkel, has a B.S. degree in geological engineering from the University of Nevada, worked as a miner, and held mining engineer and mine geologist positions with the Union Carbide Corporation over a period of many years. His employment for the greatest period of time was at the Pine Creek Mine, the leading tungsten producer in the United States. Tr. 143. He visited the Broken Bottle mining property in 1977.

Mr. Kunkel went into the raise which extends from the adit on the Broken Bottle claim. When he doused his light and turned on a black light "it lit up like these [hearing room] ceiling lights up here pretty near." Tr. 144. He took samples but not for assay. Tr. 146. In his opinion there is an excellent tungsten mine on that claim. From his observation with the black light and an examination of pieces of quartz he concluded that high grade tungsten can be mined, and that a person of ordinary prudence would expend substantial sums to work the ore body in the expectation that a profitable mine might be developed. Tr. 145.

At the Pine Creek Mine, the operators tried to process ore that was five-tenths or six-tenths of one percent WO<sub>3</sub>. The minimum was twenty-five hundredths. The average mining width was "[p]robably 20 feet." Tr. 146. Mr. Kunkel acknowledged that in some instances he had observed a great deal of fluorescence, but had not obtained the anticipated quantity of scheelite when samples were assayed. Other materials will "fluoresce the same color as scheelite." Tr. 147.

Mr. Charles W. Johnson testified on behalf of the contestee. He has been in the mining business more or less continuously since 1933. He started as a water boy and worked up to more responsible positions. He stated that he has operated numerous mills and has worked as a consultant to numerous companies. Tr. 63. He listed his degrees, including a bachelor's degree in general engineering, and master's and Ph.D. degrees in industrial engineering. The degrees were issued by Kensington University in Glendale, California. He did not attend that institution as a resident full-time student, or attend any classes there. Tr. 70, 72. He obtained the bachelor's degree in 1975, the master's in 1976 and the Ph.D. in 1977. Tr. 72.

For the last 26 months prior to the hearing Mr. Johnson had been the general manager of Cal-Pacific Mills in San Bernardino, California. Tr. 64. Before accepting that position he had been chief engineer for several mineral companies. Tr. 64.

Mr. Johnson performed a mill run test on approximately 2,400 pounds of scheelite ore delivered by Mr. Harder. He reported to Mr. Harder in a letter dated April 8, 1977, that "head ore was 9 1/2% scheelite." He indicated that they could do much better on a large amount of material, and that he was certain that the ore is amenable to conventional processing. Ex. M. In his opinion material of the type that he tested can be developed feasibly. Tr. 65.

Mr. Johnson conceded that he did not have first hand knowledge of the source of the material that he tested for Mr. Harder, and did not know how it had been mined. Tr. 66. His company performed a fire assay on that material using standard procedures, and provided a report to Mr. Harder. The case record does not contain a copy of that Cal-Pacific assay report.

Directing his statements to Mr. Harder's testimony, NPS mining engineer Mitcham expressed the view that most non-professionals who cut samples "come up with greater values than would be obtained by normal sampling methods." Tr. 150. The geologist, Mr. Gould, concluded that Mr. Harder's samples were not taken by a professionally acceptable method. Tr. 155. The proper way to evaluate the mineralized area on the Broken Bottle claim would be to cut many samples about four feet apart across the vein. Tr. 159. He acknowledged that a large sample is more reliable than a small sample, but cautioned that the large sample should not be taken "at one spot of high grade."

#### Summary of Applicable Law; Conclusions

The mining statutes do not expressly define a discovery. However, it has been held that one exists where:

"\* \* \* 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 profitable mine . . ." Castle v. Womble, 19 L.D. 457 (1894).

The above-quoted definition is approved in United States v. Coleman, 390 U.S. 599 (1968), which holds that in determining whether a mineral deposit is valuable, the Secretary of the Interior may require a showing

that there is a reasonable expectation based upon the circumstances known at the time that the mineral can be extracted, removed, and marketed at a profit.

A finding of mineralization may suggest the possibility of mineral of sufficient value and amount to justify further exploration, but it does not establish a discovery. Chrisman v. Miller, 197 U.S. 313 (1905).

Once the Government has established a prima facie case that a discovery is lacking, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery falls upon the claimants. Foster v. Seaton, 271 F. 2d 836 (D.C. Cir. 1959); United States v. Independent Quick Silver Company, 72 I.D. 367 (1965). The ultimate burden is on the mining claimants to prove that the charges by the contestant are not true and the mining claim is valid. United States v. Taylor and O'Connor, 19 IBLA 9 (1975).

A prima facie case that a discovery of a valuable mineral deposit is lacking is established when a Government mineral examiner gives his expert opinion that he examined a claim and found insufficient values to support a finding of discovery. United States v. Alex Bechthold, 25 IBLA 77 (1976).

In his examination of a mining claim a Government mineral examiner is not obliged to sample beyond the mining claimant's workings, perform exploration work, or rehabilitate workings. His function is to verify, if feasible, whether the claimant has found a valuable mineral deposit. United States v. Ramsey, 14 IBLA 152 (1974); United States v. Woolsey, 13 IBLA 120 (1973).

In II Peele, Mining Engineer's Handbook 25-08 (3rd ed. 1956), the proper method of sampling an area where valuable minerals are erratically distributed is explained as follows:

"[I]f the number of points from which equal and sufficiently large parts of the sample are taken is large enough in proportion to the irregularity of composition, and if these points are uniformly distributed, it is possible to draw a sample as exactly representative of the average composition of the mass as may be desired. . . ."

"Sampling is thus usually reduced to securing as accurate samples of the different exposures as circumstances admit and justify. . . ."

The importance of taking samples at intervals is emphasized in Parks, Examination and Valuation of Mineral Property, 35 (3rd ed. 1949):

"The spacing of channels is highly important; the intervals must be close enough to yield a representative part of the whole. In general the richer and more irregular the ore, the closer will the samples have to be spaced; and the more uniform the ore, the greater may be the sample interval that will retain the required accuracy. Wherever possible, it is better practice to have the channels at regular intervals, as this makes the process more purely mathematical and eliminates one factor in the subsequent computations." (Emphasis added)

The need for full information concerning the qualifications of the persons who took samples, and the manner in which specific samples were taken is discussed in Hoover, Principles of Mining 4 (1909):

"How frequently samples must be taken, the manner of taking them, and the quantity that constitutes a fair sample, are matters that vary with each mine. So much depends upon the proper performance of this task that it is in fact the most critical factor of mine examination. Ten samples properly taken are more valuable than five hundred slovenly ones, like grab samples, for such a number of bad ones would of a surety lead to wholly wrong conclusions . . . ."

Where claimants have held mining claims for several years and have attempted little or no development or operations, a presumption is raised that they have failed to discover valuable mineral deposits or that the market value of discovered minerals is not sufficient to justify the costs of extraction. United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975); United States v. David L. King et al, 34 IBLA 15 (1978).

Isolated showings of high values or high values determined without proper regard for the quantity of material processed and concentrated will not support a claim of valuable discovery. United States v. Kingdon, 36 IBLA 11 (1978).

#### Analysis

There is no evidence in this contest relating to discovery points or openings on the Broken Bottle No. 1 and Sadie Ruth H. lode claims. There is no indication that the mining claimants, in discussions with

the NPS mineral examiners, gave suggestions as to where samples should be taken on those claims. Mr. Gould walked over them but saw no evidence of workings. At that time the Broken Bottle No. 1 claim, like the Broken Bottle claim, had been held by the mining claimants for approximately nineteen years.

The contestant presented the required prima facie case as to all three lode claims. All of the evidence presented by the claimants is concerned with minerals on the Broken Bottle claim. Mr. Harder, who excavated the material which was tested in 1968 and 1977, referred to one source as a terribly rich showing and another as a rich area. Taking into account the fact that the vein pinches and swells, and the great discrepancy between tests on the NPS samples and those of Mr. Harder, I conclude that material removed by the latter was not representative of the existing vein on the Broken Bottle claim. The two witnesses for the contestees with the most experience in all phases of mining and testing, Mr. Kunkel and Mr. Johnson, took no part in selecting the areas to be sampled, or in approving or overseeing Mr. Harder's method of sampling. Mr. Kunkel was in the raise on the Broken Bottle claim, and took samples, but did not have them assayed. The 1968 samples were taken just prior to Mr. Harder's effort to interest a mining corporation in the claims. There is as much reason to conclude that he removed materials from segments of the vein that were unusually wide and rich as there is to find that he tested a representative part of the entire vein.

The Contestee's evidence has not overcome the testimony by the NPS mineral examiners that the average width of the vein is too narrow, that a very low grade tungsten showing exists, and that mining, transportation and processing costs would be substantially more than any recovery which can be anticipated. I hold, therefore, that the charge in Paragraph 5A of the Complaint, relating to lack of a discovery of valuable minerals on the three lode claims, has been sustained.

The contested mill site claim is not being used for a quartz mill or reduction works in order to process mineral material from a vein or lode. It has no proven association with a placer claim. My holding above is that the mining claimants have not made a discovery of a valuable mineral deposit on any of the three contested lode claims. Accordingly, Mr. Harder and Mr. Ruona cannot establish a right to a mill site claim based on invalid mining locations. Having failed on the discovery issue, the mining claimants are not the proprietors of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1976). United States v. Ray Paden, 33 IBLA 350 (1978).

For the reasons stated in this decision, the Broken Bottle, Broken Bottle No. 1, and Sadie Ruth H lode mining claims, and the mill site claim which is a subject of this contest are found to be invalid (complete descriptions of the four invalidated claims are contained in the Complaint dated April 11, 1978).

Dean F. Ratzman  
Administrative Law Judge

Appeal Information

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 October, 1977). 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 a copy of the notice of appeal and other documents is the attorney for the United States Department of the Interior whose name and address appear below.

Enclosure: Additional Information Concerning Appeals

Distribution:

Field Solicitor, Office of the Solicitor, U.S. Dept. of the Interior, San Francisco Field Office, 450 Golden Gate Avenue, Box 36064, San Francisco, California 94102 (Cert.)

Robert D. Harder, Attorney at Law, Babb, Harder, Neff & Zolot, 1818 First Avenue, San Diego, California 92101 (Cert.)

Emmett C. Harder, 18201 Muriel Ave., San Bernardino, California 92407

Carl Ruona, Route 2, Box 1375, Shingle Springs, California 95682 (Cert.)

Chief, Division of Minerals and Lands, National Park Service, Western Regional Office, U.S. Dept. of the Interior, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102

Standard Distribution

