

UNITED STATES  
v.  
LEE WESTERN, INC.  
GARTH BLACK

IBLA 80-284

Decided September 17, 1980

Appeal from a decision of Administrative Law Judge Michael L. Morehouse declaring invalid the Aeolian Nos. 1 through 10 lode mining claims. A 9847.

Affirmed as modified.

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

Mineralization which only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. Where it is shown that a contestee does not have a discovery at the time of the hearing, it is not necessary for contestant to establish invalidity by showing a lack of discovery at the date of an earlier withdrawal from mineral location.

APPEARANCES: Albert H. Mackenzie, Esq., Phoenix, Arizona, for appellants; Fritz L. Goreham, Esq., Office of the Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for contestant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The United States, acting by and through the State Director for Arizona, Bureau of Land Management (BLM), and on behalf of the Bureau of Indian Affairs, issued contest complaints A 9838, A 9846, and A 9847 charging that as to the claims named therein and situated within the Papago Indian Reservation valuable minerals have not been found within the limits of the mining claims so as to constitute a

discovery within the meaning of the mining laws. <sup>1/</sup> The complaints further charged that the land embraced within the claims is nonmineral in character. Garth Black was named as a contestee in each complaint; Lee Western, Inc., was named in contests A 9846 and A 9847; Mrs. Mildred LaFleur was named in contest A 9847.

Timely answers to the complaints were filed by Black and Lee Western, but Mrs. LaFleur did not answer. BLM, by decision dated April 19, 1978, declared the interest of Mrs. LaFleur in the Aeolian Nos. 1 through 10 lode mining claims null and void, because her failure to answer the allegations of the complaint was taken as an admission of the truth of the charges. Thereafter, the cases were consolidated for hearing, which was held before Administrative Law Judge Michael L. Morehouse at Phoenix, Arizona, on February 26, 27, and April 13, 1979. By his decision of December 20, 1979, Judge Morehouse declared all the contested claims invalid for lack of a discovery and specifically held the Aeolian claims invalid as of May 27, 1955, the date of withdrawal of the lands within which the claims lie. He did not rule on the charge that the land was nonmineral in character.

The contestees have conceded the invalidity of the mining claims included in contest A 9838 and contest A 9846, so the decision of the Judge is final as to those claims.

As to the Aeolian Nos. 1 through 10 lode mining claims in contest A 9847, the contestees appeal and set forth these alleged errors in the Judge's decision:

First, There is a fatal variance between the Government's charges and its proof which was not foreshadowed in the charges, and therefore is in violation of due process.

Second, The Government fell far short of establishing a prima facie case as to said Aeolians Nos. 1 thru 10.

Third, The contestees produced a strong preponderance of the evidence in the case as a whole.

Contestees also move to dismiss based upon these same arguments.

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<sup>1/</sup> Complaint A 9838, issued September 15, 1977, involves the Birthday No. 1 and Birthday No. 2 lode mining claims. On March 10, 1978, complaint A 9846 issued naming the Golden King No. 1, Gold King Nos. 2, 3, 5, 7, 9, South Gold, Titan Nos. 1, 3, 4, 5, 6, 7, Iron Cap No. 1, and the Golden Hills No. 1, 2, 3, 4, 5 lode mining claims. The Aeolian Nos. 1 through 10 lode mining claims are the subject of complaint A 9847, issued March 2, 1978.

[1] The law of the case may be summarized as follows:

Section 3 of the Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. § 463, as amended by the Act of August 28, 1937, 50 Stat. 862, opened the Papago Indian Reservation to exploration, location, and entry under the mining laws of the United States. 30 U.S.C. § 22 (1976). Payment to the Papago Tribe of a minimal annual rental not to exceed 5 cents per acre was required for each mining claim located.

The Act of May 27, 1955, 69 Stat. 67, repealed the foregoing statutes insofar as they related to mining claims in the Papago Indian Reservation and declared all land within the Papago Indian Reservation to be withdrawn from exploration, location, and entry under the United States mining laws, but permitted existing valid mining claims to continue so long as they were maintained under the mining laws of the United States.

It is well established that the sine qua non for a valid mining claim located on public land of the United States is discovery, as the location of a mining claim conveys no rights to the claimant until there is shown a discovery of a valuable mineral deposit within the limits of the claim. 30 U.S.C. § 23 (1976). Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing. United States v. Chappell, 42 IBLA 74 (1979); United States v. Garner, 30 IBLA 42 (1977). Under the so-called "prudent man test," discovery has been achieved when one finds a mineral deposit of such quantity and quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894), approved by the Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905), and followed consistently thereafter. Accord, Cole v. Ralph, 252 U.S. 286 (1920); Cameron v. United States, 252 U.S. 450 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); United States v. Coleman, 390 U.S. 599 (1968); Adams v. United States, 318 F.2d 861 (9th Cir. 1963). The "prudent man test" has been complemented by the "marketability test" requiring a claimant to show that the mineral can be extracted, removed, and marketed at a profit. United States v. Coleman, supra; Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969).

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit. Barton v. Morton, 498 F.2d 288 (9th Cir. 1974); United States v. Porter, 37 IBLA 313 (1978). Similarly, it is not enough that the mineral values exposed justify further exploration to determine whether

actual mining operations might be warranted. In order to have a valid mining claim, valuable minerals must be exposed in sufficient quantities to justify development of the claim through actual mining operations. United States v. Marion, 37 IBLA 68 (1978). It is not sufficient that high mineral values are attached to certain samples where no evidence is presented establishing the quantity of such mineralization and where such samples are shown to be in areas of high concentration not representative of the claim. Sedgwick v. Callahan, 9 IBLA 216 (1973). Although the claim may have been valid in the past because of a discovery on the claim of a valuable mineral deposit, it must be shown as a present fact at the time of the hearing that the claim is still valuable for minerals.

When land is closed to location under the mining law subsequent to the location of a mining claim, the claim cannot be recognized as valid unless (a) all requirements of the mining law, including discovery of a valuable mineral deposit, were met at the time of the withdrawal; and (b) the claim presently, *i.e.*, at the time of the hearing, meets the requirements of the law. United States v. Porter, *supra*; United States v. Netherlin, 33 IBLA 86 (1977).

When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case. Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Springer, 491 F.2d 239 (9th Cir. 1974), *cert. denied*, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit. United States v. Taylor, 25 IBLA 21 (1976).

It is the duty of the mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners. Mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim, nor do they have to go beyond examining the discovery points of the claimant. The function of the Government's examiners is to examine the discovery points made available by the claimant and to verify, if possible, the claimed discovery. United States v. Bryce, 13 IBLA 340 (1973). Where a claimant fails to keep his discovery points open and safely available for sampling by the Government's examiner, or declines to accompany the examiner to the claim, he assumes the risk that the Government examiner will be unable to verify the alleged discovery of a valuable mineral deposit. United States v. Knecht, 39 IBLA 8 (1979); United States v. Bechthold, 25 IBLA 77 (1976).

The Government's case was presented by testimony from John E. Kinnison, a consulting geologist working with Dr. C. L. Fair under contract H50C14209834 with the Bureau of Indian Affairs. Kinnison stated that, in June 1976, he had discussed the impending examination of the Aeolian mining claims with Garth Black, and had asked Black if he or a representative wished to point out the best mineral showings on the claims. Black declined the invitation (Tr. 97). The examination of the Aeolian claims was made by Kinnison on July 28, 1976. He was assisted by Barton Cross, a registered mining engineer, and Dan Boyd, a geologist from the graduate school of the University of Arizona.

Kinnison indicated that the claims were located on the ground by means of maps furnished by Black and identified by the color-coded 4 x 4 posts at the corners and location points (Tr. 98). Kinnison stated that the claims are in a granitoid area, ranging from quartz diorite to a lighter granodiorite, with monzonite dikes crossing. Mineralization was observed in narrow shear zones. Standard channel samples were taken from mineralized zones in prospect pits or shafts, wherever possible. A description of the sampling is set out in Government's Exhibit 8, pp. 3-5:

Aeolian No. 1: Samples LW-24 and LW-25: These two samples are channel samples from a prospect pit located 40' southeast of the location post, which is in the exact center of the claim. LW-24 was a 28" channel across two narrow splits of a quartz-chlorite zone, in granodiorite, on the southwest wall of the pit. LW-25 was a 13" channel cut across a single quartz chlorite zone with minor chrysocolla, on the northeast wall. This main zone strikes N. 58 degrees E. and dips vertical. Pit was sunk through a thin layer of alluvium into bedrock. Most of the claim is alluvial covered.

Aeolian No. 2: Sample LW-18: This claim was sampled with a 1.5' channel cut from a cross-cut trench located 100', N. 02 degrees E. from the location post, which is in the exact center of the claim. The sample was cut across a sheeted zone with chrysocolla, striking N. 58 degrees E., and dipping 75 degrees SE. The mineralization could not be traced beyond the short trench \* \* \*.

Aeolian No. 3: Samples LW-22 and 23: These samples were channels cut from the front roof (or back) of a short stub adit run just below the surface \* \* \*. The two channels are continuous across a strongly sheeted zone in granodiorite with abundant chrysocolla; the zone strikes N. 46 degrees E. and is vertical. LW-22 was cut 22" from the north wall to the center, and LW-23 was cut 21" from the center to the south wall of the mineralized zone. The samples are located 100', S. 62 degrees E., from the southwest end center monument of the claim.

Aeolian No. 4: Sample LW-17: This sample was a channel cut across a 4.5' fractured and sheeted zone with chrysocolla, striking N. 58 degrees E. and dipping 75 degrees NW, in a granodiorite host. The sample is located 200' N. 64 degrees W. from the NE end center of the claim. The sample was taken from the SW wall of a prospect pit; the southwesternmost of 2 pits and a 20' open cut which have explored this zone. [Sic]. Alteration is weakly chloritic with a few quartz stringers.

Aeolian No. 5: Sample LW-21: This sample, located 100' NW of the southern side line, and 150' NE of the SE end line, was taken from a small "pot hole". It is a 20" chip-channel across a fractured zone striking about N. 48 degrees E., and dipping vertical. Minor chrysocolla with abundant epidote and chlorite. The host rock is a quartz monzonite dike(?), which is covered by talus on the hillside and exposed only in the small pit.

Aeolian No. 6: Sample LW-26: This sample, located near the location post in the center of the claim, was a 2' channel sample cut from a bedrock outcrop in a gully, at the intersection of a breccia zone with minor chrysocolla, striking N. 58 degrees W., and a sheeted zone striking N. 56 degrees E. Country rock is granodiorite.

Aeolian No. 7: Sample LW-19: Surface chip sample, 3' outcrop of granodiorite with minor epidote and thin quartz seams, located 25' NW of the common end center of the claims 5 and 7 (the NE end center of Aeolian 7). No prospect diggings were seen on this claim.

Aeolian No. 8: Sample LW-20: This sample was a 4' long chip channel sample from the surface outcrop of a fracture zone striking N. 59 degrees E., dipping 67 degrees SE, with chlorite alteration on fractures. The sample site is 25' west of the NE end center of the claim \* \* \*.

Aeolian No. 9: Sample LW-27: This sample site is at the southwest end of a 75' long trench, which follows a mineralized fault zone which strikes N. 37 degrees E. and dips 45 degrees SE. The sample is a 30" channel cut across the true width of the dipping shear zone, which is soaked with hematite and contains chrysocolla, mostly on seams in the fault zone. Some clay alteration is present, mixed with gougy seams. Sample site is 150', N. 04 degrees E., from the SE corner of the claim.

Aeolian No. 10: Sample LW-28: This sample was a surface chip sample over a 3' area, on the NE slope of a small hill in the extreme SW corner of the claim. The rock is

granodiorite with minor epidote. Beyond this hillslope, to the northeast, the claim is covered by alluvium. No prospect pits or significant mineralization were found.

The results of assays of the samples from the Aeolian claims shown in Government's Exhibit 10 are:

Sample	Au ppm	Ag ppm	Cu ppm
17	0.28	45.	20000
18	0.41	1.6	7800
19			90
20			720
21			4600
22	0.29	1.2	35000
23	0.10	4.4	35000
25			6300
26			24000
27	0.22	32.	50000
28			255

Kinnison stated that large copper mining operations involving millions of tons of blocked out ore are possible with lower grade ores, but that the break even point for small operations in copper mining in Arizona is on the average of 5-1/2 percent copper, citing Harry E. Krumlauf in Exploration and Development of Small Mines, Bulletin 164, Arizona Bureau of Mines (1966). Kinnison stated that the exposed veins in the Aeolian No. 3 and Aeolian No. 9 approached the minimum value of copper, and he estimated some 500 tons of ore on each claim, basing this estimate on his pacing the exposed vein (Tr. 123). As the rock is not suitable for obtaining a silica bonus from the smelter (the silica acts as a flux for which the smelter makes additional payment), Kinnison observed that the small tonnage on the Aeolian No. 3 and Aeolian No. 9 probably could not be mined without experiencing a loss in excess of \$11,000 (Gov't Exh. 8). The showings on the remaining eight claims of the Aeolian group were so meager, he felt, that no prudent man would proceed with further exploration or development.

On cross examination, Kinnison stated he had seen no other improvements than those he reported in his written examination (Gov't Exh. 8) and maintained that he saw nothing to indicate a continuity of vein structure through the claims.

We agree with the Judge that the Government made a prima facie case of lack of discovery, but we would limit this showing to a lack of discovery as of the time of the hearing, rather than as of May 27, 1955.

Charles E. Cronenwett, a consulting mining geologist, testified on behalf of the contestees. He stated that he had examined the Aeolian claims during February and March 1979, spending some 15 days on the claims. His overall description of the area and geology conforms to that given by Kinnison. He stated, however, that the corner posts defining the claim sites are round, rather than square as testified by Kinnison. Cronenwett, without accepting the assumptions of Kinnison, but computing sample values based on 1979 metal prices, established that the contemplated mining of 1,000 tons of ore could bring a net profit of some \$3,600, rather than a loss of some \$11,000 (Tr. 335).

Cronenwett admitted that the channel samples taken by Kinnison were probably more accurate than the chip samples he took, because the larger the sample, the more accurate the sample (Tr. 354). Cronenwett took 23 chip samples from the ten claims. The average value of copper was 4.6 percent, with the highest sample showing slightly more than 11 percent copper. This sample was taken from Aeolian No. 3. He discussed the presence of mineralized veins and fractures on the claims and stated that on the ground and from aerial photos, he had traced a vein on Aeolian No. 6 for more than 800 feet (Tr. 340). He postulated that faulting had caused a lateral displacement of several hundred feet, but that the major vein on Aeolian No. 4 was a continuation of the vein on Aeolian No. 3. He stated that one could estimate the ore reserves as the product of the observed length of the vein, its width, and its depth, assuming a depth of half the length if the third dimension could not be accurately measured. Based on his calculations, he suggested that there are some 13,000 tons of 3-1/2 percent copper ore in the vein structure on Aeolian Nos. 3 and 4 (Tr. 333).

Cronenwett stated that Aeolian No. 1 was questionable by itself, but with the adjacent Aeolian Nos. 3 and 4, it made a good prospect for further exploration (Tr. 323). He also stated that he found no significant mineralization on either Aeolian No. 5 or Aeolian No. 7 (Tr. 325). More exploration is necessary on Aeolian No. 8, either by clearing the alluvium overburden or by drilling (Tr. 327-8). Similarly, more exploration was justified on Aeolian No. 10, even though there is no exposed mineral at the surface. The mineral values on Aeolian Nos. 6 and 9 inferentially are assumed to extend onto Aeolian No. 10. Despite the showing on Aeolian Nos. 3 and 4, Cronenwett stated that further exploration is necessary as the group of claims is still considered to be a prospect (Tr. 343). He surmised that the claims had been located originally for gold and silver, with little attention being paid to the copper values present. His samples showed traces of both gold and silver, but in his opinion the claims should be prospected thoroughly for copper by deep drilling.

Cronenwett did not express an opinion as to any possibility of a present profitable mining operation on any of the Aeolian claims, but

emphasized several times that the claims represented only a promising prospect (Tr. 323, 324, 327, 328, 330, 331, 343, 355).

As a first charge of error, counsel for appellants quotes from the Judge's decision: "Thus, there is nothing in the record to show the validity of the Aeolian claims as of the withdrawal date. Accordingly, they are declared invalid." Counsel argues that there is nothing in the record to show that the area occupied by the Aeolian claims was withdrawn in 1955 or at any other time. Counsel apparently overlooked the contest complaint and the answer thereto by contestees. The first paragraph of the complaint reads: "The lands hereinafter described are within the boundaries of the Papago Indian Reservation and were open to mineral entry at date of said location." Paragraph one of the answer by contestees reads: "Admit the allegations contained in paragraph one of Contestant's Complaint." In his opening remarks at the hearing, Government counsel said, after a brief discussion of the Papago Indian Reservation and the closing of the reservation to mining location by the Act of May 27, 1955, "[I]t's the government's contention that the contestee has to show a discovery as of May 27, 1955, at the time the reservation was [with]drawn from entry, as well as a present discovery" (Tr. 8). At the opening of the testimony relating to the Aeolian group, Government counsel stated, "I'd like to make the same basic statement that I made in the other one. The claims which are the subject of this contest \* \* \* are the Aeolian Lode Claims 1 [to] 10, the claimants are Lee Western, Inc., and Mr. Garth Black. These claims are located within the exterior boundaries of the Papago Indian Reservation which was withdrawn from entry by Act of Congress on May 27, 1955" (Tr. 91). Counsel for contestees did not object to the statements or offer any contrary argument. Review of the transcript discloses the following colloquies with the witnesses, relative to the status of the Aeolian claims on the date of withdrawal of the Papago Indian Reservation from operation of the mining laws, May 27, 1955.

JUDGE MOREHOUSE: Now, as your opinion as to invalidity, I take it that is both as of -- this is as of May 27, 1955?

THE WITNESS [KINNISON]: I presume so. The claims' history and size is something that I didn't really go into. They're standard claims.

JUDGE MOREHOUSE: Well, I got the feeling that your opinion is as of the present time. Is it not?

THE WITNESS: Yes.

JUDGE MOREHOUSE: Or the time you examined the claims.

THE WITNESS: Yes.

JUDGE MOREHOUSE: And, does this opinion also apply to on or about the time of the withdrawal date, May 27, 1955?

THE WITNESS: If I were to have examined them at that time?

JUDGE MOREHOUSE: Yes. Do you have an opinion based on your examination of the claims in 1977 as to their validity as of the withdrawal date, May 27, 1955?

THE WITNESS: It would have been the same.

JUDGE MOREHOUSE: All right.

THE WITNESS: I see no way to mine them, even on a break even basis.

JUDGE MOREHOUSE: Did you have anything further, Mr. Mackenzie?

MR. MACKENZIE: Yes, I do, please.

THE WITNESS: I suppose I should qualify that. That's applying the 19 -- the modern -- the post Coleman standards to the '55 decision, or the '55 date.

JUDGE MOREHOUSE: Yes.

(Tr. 184-85).

JUDGE MOREHOUSE: Well, as you're aware, Mr. Mackenzie, this -- this area was withdrawn from entry back in May of 1955. Have you asked Mr. Cronenwett to make any -- form an opinion as to the dollar value of these -- well, perhaps you're going to get into that later. I don't mean to anticipate.

MR. MACKENZIE: Well, I think you've already asked him, have you not?

JUDGE MOREHOUSE: Well, but not as of -- not as of that -- not as of that date.

MR. MACKENZIE: Oh, 1955.

JUDGE MOREHOUSE: 1955. I assume that you will probably be asking him that, but I didn't know if he'd figured values as of, what date, Mr. Cronenwett?

THE WITNESS [CRONENWETT]: April 6, 1979.

JUDGE MOREHOUSE: Yeah. I wonder if he made any effort to go back to 1955 and figure values as of that time?

MR. MACKENZIE: Did you do -- did you make any effort to ascertain the values in 1955 as -- by that, I mean first of all, the monetary value. It would be -- of course that would presuppose that you had some knowledge of the actual mineralization in the Aeolian number 2 or any other claim as of 1955?

THE WITNESS: To answer your question specifically, no, I did not research the prior -- the value at that time.

JUDGE MOREHOUSE: All right.

BY MR. MACKENZIE:

Q. Now, we might simplify that and ask you, have you made any estimate or calculations of the -- of the value of the deposit on any of the Aeolian numbers 1 through 10 as of May, 1955?

A. No, I have not.

(Tr. 289, 290).

In any event, where a claimant does not have a discovery of a valuable mineral deposit on a mining claim at the time of a hearing on lands previously withdrawn from location, it is not essential for the Government to show a lack of discovery at the date of the withdrawal. United States v. Rigg, 16 IBLA 385 (1974).

Appellant's second argument on appeal charges that the Government fell far short of establishing a prima facie case. Counsel cites testimony of the Government witness from pages 233, 237, 246, and 247 of the transcript. The colloquy cited was given in connection with the 19 claims in contest A 9846, the Golden Hills group of claims, the invalidity of which the contestees have conceded. The cited colloquy had nothing to do with the Aeolian group, the subject of this appeal. Counsel's reference to the fact that the ten Aeolian claims were examined by Kinnison in only 1 day does not cause us to reverse the finding below that a prima facie case has been made by the Government. The courts have repeatedly held that the mining claimant is the true proponent of the rule or order under the Administrative Procedure Act to the effect that the proponent of the rule or order has the burden of proof. Thus, after the Government presents a prima facie case of invalidity of a mining location, the burden of proof is on the claimant to establish all requirements for a valid location. Hallenbeck v. Kleppe, *supra*; United States v. Springer, *supra*; Foster v. Seaton, *supra*. Nor is the Government examiner required to perform discovery work for the claimant or to explore or sample beyond areas exposed by

the claimant. The examiner simply verifies whether a discovery has been made. Hallenbeck v. Kleppe, supra.

The third charge of appellants that the contestees produced a strong preponderance of the evidence is simply disposed of. Their witness, Cronenwett, testified lucidly as to his extended examinations of the Aeolian claims and introduced rather high results from his sampling of the claims, but as has been shown, supra, Cronenwett did not ever express any opinion as to the economics of any present mining operation on the claims. To the contrary, he repeatedly categorized the claims as "promising prospects," and not claims on which a discovery of a valuable mineral deposit had been shown. Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. Barton v. Morton, supra.

Although the record does not unequivocally support the Judge's conclusion that no discovery of a valuable mineral deposit had been shown on any of the Aeolian claims as of May 27, 1955, the record clearly supports a finding of no discovery at the time of the hearing. Accordingly, appellants' motion to dismiss is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified, and the Aeolian Nos. 1 to 10 mining claims are declared invalid.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Frederick Fishman  
Administrative Judge

