

UNITED STATES

v.

W. S. WOOD ET AL.

IBLA 80-803

Decided December 18, 1980

Appeal from a decision of Administrative Law Judge E. Kendall Clarke holding null and void certain mining claims in Whiskeytown-Shasta-Trinity National Recreation Area, Shasta National Forest. CA-2883.

Affirmed.

1. Mining Claims: Discovery: Generally

The 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. Mining Claims: Discovery: Generally

Evidence which will not justify development of a claim but may justify further

exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

3. Mining Claims: Discovery: Generally -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

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

When the United States contests a mining claim it has by practice 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.

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

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

6. Secretary of the Interior

The Secretary of the Interior is authorized, and is under a duty to consider and determine what lands are public lands of the United States, and after having made that determination the Secretary has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellants; Charles F. Lawrence, Esq., U.S. Department of Agriculture, San Francisco, California, for contestant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken from the decision of June 24, 1980, by Administrative Law Judge E. Kendall Clarke, wherein he held certain unpatented lode mining claims 1/in the Shasta National Forest to be

1/ The Fox Mine, formerly known as January; Candalaria Copper Mine, a.k.a. Canadalana; E Valena Mine, a.k.a. Evelena Claim and Evalena; Triangler Quartz Mining Claim; Manges No. 2 Mine; White-House Quartz Mining Claim, a.k.a. White Horse; Duck Mine; Gass Mine; Banar No. 2 Mine, a.k.a. Baner No. 2 and Banner No. 2; and Thy Angler Clame, a.k.a. Thry Angler Mine Quartz Mining Claims, situated in the W 1/2 sec. 1, T. 33 N., R. 4 W., Mount Diablo meridian, Shasta County, California, within the Shasta National Forest and the Whiskeytown-Shasta-Trinity National Recreation Area.

null and void because the contestees 2/ in Contest CA 2883 had failed to prove a valid discovery as to each and every claim. The claims at issue occupy lands in the Whiskeytown-Shasta-Trinity National Recreation Area, a site withdrawn from location, entry, and patent under the United States mining laws by section 6 of the Act of November 8, 1965, 16 U.S.C. § 460q-5 (1976).

A contest complaint was first issued on July 3, 1975, charging as follows as to the claims at issue:

A. There are not presently disclosed within the boundaries of the mining claims minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

B. The land embraced within the claims is nonmineral in character.

C. The land embraced within the claims is not held in good faith for mining purposes.

D. The \$100 worth of labor or improvements required by 30 U.S. Code, Section 28, has not been performed or made on or for such claims.

In Contest CA 2883, United States v. Estate of W. R. Wood, a.k.a. Walter R. Wood, Rodney Wood, as Administrator of the Estate of W. R. Wood, deceased, denied the charges, and the matter came on for a

2/ The complaint which led to the instant decision of Judge Clarke is styled United States v. W. S. Wood, a.k.a. Walter S. Wood; Unknown Heirs and Devisees of W. R. Wood, a.k.a. Walter R. Wood, Deceased; and Unknown Owners.

hearing before Administrative Law Judge Dean F. Ratzman. Following the hearing Judge Ratzman declared all the claims null and void for lack of discovery. Following appeal to this Board Judge Ratzman's decision was affirmed insofar as it related to the interests of B. Victor Wood and Rodney Wood, but reversed insofar as it purported to affect the interest of W. S. Wood and any other heirs at law of Walter R. Wood. United States v. Estate of W. R. Wood, 34 IBLA 44 (1978). At the hearing before Judge Ratzman it was shown that the estate of Walter R. Wood had never been probated and that Rodney Wood was not administrator of the estate as no administrator, executor, or personal representative had ever been appointed to supervise the descent of Walter R. Wood's property. As both B. Victor Wood and Rodney Wood appeared at the hearing and contested the merits of the case as heirs at law of W. R. Wood, the decision declaring their interests null and void was affirmed. Although present at the hearing, Walter S. Wood did not participate in the proceeding.

Thereafter, following a renewed request from the Forest Service, U.S. Department of Agriculture, the California State Office, Bureau of Land Management (BLM), reissued on January 9, 1979, a complaint in contest CA 2883 and served this pleading by publication under the styling, United States v. W. S. Wood, a.k.a. Walter S. Wood, heirs and devisees of W. R. Wood, a.k.a. Walter R. Wood, deceased, their heirs, personal or legal representatives, or assigns, charging exactly as in the original contest against the identical unpatented mining claims.

Denial of all of the statements in the complaint was made by Walter S. Wood, B. Victor Wood, and Rodney Wood. The State Office accepted the answer by Walter S. Wood, but advised the other respondents that their interests in the subject claims had been declared null and void in United States v. Estate of W. R. Wood, supra. The matter came on for a hearing before Administrative Law Judge E. Kendall Clarke on October 31, 1979, at Sacramento, California.

We have reviewed the record established at the hearing and conclude that Judge Clarke has accurately reported the material evidence and testimony therein given in his decision to declare the aforementioned mining claims null and void. We affirm.

Appellants contend that the positive prudent man opinion of their witness, Tibor Klobusicky, being supported by testimony of probative facts, preponderates over the negative prudent man opinion of Emmett Ball, the Government's witness. Appellants further argue that the Forest Service had no authority to initiate the prosecution of this case and that the U.S. Department of the Interior has no jurisdiction over lands of the State of California. Finally, appellants request that this Board rule on each of 50 proposed findings of fact.

The Judge summed up the evidence and testimony as follows:

Mr. Emmett B. Ball, Jr., a mining engineer with the United States Forest Service, testified he had given testimony at the hearing involving these same ten lode mining

claims on January 19, 1977. (Tr. 10). He had examined the claims again in April, 1979. No changes were detected on the claim. He took a grab sample from the Mangenes No 2 claim and had it assayed. (Tr. 17). The assay report disclosed .06% manganese and a major amount of iron. (Tr. 20). Iron gossan exposures were seen on the Mangenes No 2 claim. (Tr. 26). He examined all ten of the claims in issue. (Tr. 29).

Sample No. 2465 was taken from the Gass claim. (Ex. D). A spectrographic analysis revealed the major constituent was silicon. (Ex. H-1, Tr. 33). Sample No. 2466 was taken from the claim boundaries between the Evalena and Triangler claims. The spectrographic analysis disclosed silicon as the major mineral. (Ex. H-2, Tr. 34). Negligible amounts of gold were recovered. (Ex. H-5). Sample No. 2467 was taken from the Mangenes No 2 claim and it showed the major mineral as silicon. (Ex. H-3). Silicon was also the major constituent found in Sample No. 2468 taken from the south end of the Mangenes No 2 claim. (Tr. 35, Ex. H-4). In addition, a chemical assay of Sample No. 2468 revealed only .07% manganese. (Tr. 37, Ex. H-5). Sample No. 2474 was taken from the Candalaria claim and the spectrographic analysis found the major constituents to be silicon and iron. (Ex. H-7). A fire assay of this sample showed only .015 oz. of gold per ton. (Ex. H-6). No other points were sampled. (Tr. 42). In Mr. Ball's opinion, a prudent person would not spend time mining any of the claims for iron or manganese. (Tr. 47).

In order to develop an economically viable mining venture to extract iron ore, it would take millions of tons of ore reserves and millions of dollars to construct a processing plant. (Tr. 52). The mining claimants initially expressed an interest in mining for manganese, gold, silver and copper. (Tr. 54).

The transcript of the hearing held on January 19, 1977, which contained the testimony of Emmett B. Ball, was entered into the record. In essence, Mr. Ball believes that there are no valuable mineral deposits exposed on any of the claims that would justify a prudent man in developing any of the claims. He examined all the claims but took samples on only five of them. Mr. Ball found two houses and a lot of "junk cars." No mining equipment was found but two old adits were on the claims. One was caved in and the other was being used as a root cellar. The land was not used for mining. (Tr. 25). No significant amounts of manganese or iron were disclosed in the spectrographic analysis.

Mr. Walter S. Wood, a mining claimant, testified he has milled thousands of tons of ore during his mining career. He was a research metallurgist. (Tr. 62). He found hematite on the claims. (Tr. 64). Manganese is restricted to the Mangenes No 2 claim. (Tr. 66). Mr. Wood has also found gold and silver on the claims. (Tr. 67). However, he does not recall from where it was collected. (Tr. 68). Diamond drill exploratory holes were placed on several claims to depths of 140 feet. Hematite iron was found. (Tr. 71). However, these holes were not on any of the claims subject to this contest. (Tr. 72). Surface cuts were also made but they were not on any of the contested claims.

On cross-examination, Mr. Wood stated that after he had core drilled on several locations, the findings encouraged him to proceed to obtain further financial backing. However, he did not name any particular individuals who would be interested in developing the claims. (Tr. 79).

Tibor Klobusicky, a registered professional engineer and consulting geologist, testified on behalf of the mining claimant. (Tr. 82). He is a qualified mining engineer with extensive experience in mining for manganese and iron. (Tr. 84). As a member of the Bunker Hill Mining Company's exploration staff, he spent two years investigating iron ore deposits in the Redding, California area. (Tr. 85). These iron ore deposits were known as the Lakeshore Mines and they are a mile northwest of the Wood family claims. The Lakeshore deposits were abandoned because other high grade ore deposits were discovered in Australia and Brazil. (Tr. 91).

Mr. Klobusicky examined the iron deposits in the western half of Section one in which the Wood family claims are located. Examinations were made in February and April of 1979. The February examination concentrated on manganese development and the April examination on iron ore potential. (Tr. 92). Five samples of iron ore material were taken in April. (Tr. 93). The arithmetic average of these five samples was 39.6% iron. (Tr. 97). In Mr. Klobusicky's opinion, this is a commercial grade of iron ore. The price of iron as of the date of the hearing was 64 [cents] per percent per ton. (Tr. 99). Mr. Klobusicky could not determine whether the iron ore on the claims could be marketed at a profit. (Tr. 100).

Mr. Klobusicky took four samples from the manganese structure found on the Mangenes No 2 claim. (Tr. 107). Sample No. 1176 revealed 16 percent manganese (See Ex. 18-A). Sample No. [1177], taken 232 feet southwest of Sample No. 1176, contained 16.9% manganese. Approximately

128 feet away, Sample No. [1178] assayed 6.9% manganese. At 85 feet away from Sample [1178], Sample No. 1179 disclosed only .8% manganese. (Tr. 108). He estimated a manganese reserve of 55,000 tons at an average grade of 13.2%. (Tr. 108).

When asked whether a prudent man would develop the ten contested Wood family claims, Mr. Klobusicky believed he presently could not make such a determination. He believed more development work was needed. Significantly, he conceded that most of his sampling work took place outside of the Wood claims although they were very close to those claims. By geological inference, he projected the mineral deposits onto the Wood claims. (Tr. 110). Nonetheless, he would encourage a prudent man to develop these claims. (Tr. 111).

Upon further questioning, Mr. Klobusicky testified he recommended that the Wood family conduct further exploration and delineation of the iron and manganese deposits on the claims. (Tr. 114). More information about the ore deposits is needed. (Tr. 116). Mr. Klobusicky could not state that he had seen a sufficient tonnage of manganese to support a practical operation. (Tr. 118). Although he believed that he took four samples from the Mangenes No 2 claim, he was not sure where his sample points were in relation to the claims. He was told that he was on the Mangenes No 2 claim and therefore assumed his sample points were on that claim. (Tr. 120). He had no independent knowledge of where the sample points were since he did not locate any claim corners or do any surveying. (Tr. 121). He recommends that future development be conducted away from the Mangenes No 2 claim. (Tr. 121). Before mining for manganese, a 25% to 30% grade of manganese ore should be found. (Tr. 136).

Two reports on the Deep Pit Mine (Ex. 17 and Ex. 18) prepared by Mr. Klobusicky were admitted into evidence. A report dated September 10, 1979 evaluated the iron ore potential of the gossan zones in the area. No accurate outline of the gossan zones were made although a map of the estimated zone was prepared. Detailed exploration, which includes drilling, is needed to determine the extent of the iron ore deposit. Mr. Klobusicky's estimates included lands outside of the Wood claims.

It is well established that the sine qua non for a valid mining claim located on public lands of the United States is discovery, as the

location of a mining claim conveys to the claimant no rights against the United States until there is shown a discovery of a valuable mineral deposit within the limits of the claim. 30 U.S.C. § 23 (1976). Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969). Implementation of this standard has been left to the Executive and the Courts. Converse v. Udall, supra at 619.

[1] The Supreme Court, in Chrisman v. Miller, 197 U.S. 313 (1905), approved the so-called "prudent man test" of discovery enunciated by the Department in Castle v. Womble, 19 L.D. 455, 457 (1894), that 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. The Court has followed this decision consistently since that time. Accord, United States v. Coleman, 390 U.S. 599 (1968); Best v. Humboldt Placer Mining Co., supra; Cameron v. United States, 252 U.S. 450 (1920); Cole v. Ralph, 252 U.S. 286 (1920). See also Multiple Use, Inc. v. Morton, 504 F.2d 448 (9th Cir. 1974); Adams v. United States, 318 F.2d 861 (9th Cir. 1963); Lange v. Robinson, 148 F. 799 (9th Cir. 1906). 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, supra.

[2] 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).

Geological inference may only be relied upon in evaluating the extent and potential value of a particular exposed mineral deposit under the prudent man test of discovery and may not be employed as a substitute for the actual finding of a mineral deposit within the limits of the claim. United States v. Bechthold, 25 IBLA 77 (1976). Geological inference alone cannot support a determination under the mining laws that a discovery of a valuable mineral deposit has been made. The claimant must actually expose a valuable mineral deposit physically within the limits of the claim. United States v. Walls, 30 IBLA 333 (1977). Evidence necessary to demonstrate the existence of an ore body or bodies sufficient to warrant a prudent person to develop a valuable mine may not be shown by geologic inference. Similarly, such inference may not be used to infer mineralization throughout an area where the

evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous. United States v. Edeline, 39 IBLA 236 (1979).

[3] When land is closed to location under the mining laws subsequent to the location of a mining claim, the claim cannot be recognized as valid unless all requirements of the mining laws, including discovery of a valuable mineral deposit, were met at the time of the withdrawal and 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). 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). Even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location. United States v. Wichner, 35 IBLA 240 (1978).

[4] 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).

[5] 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 mining claimants 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 claimants 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 on 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. Russell, 40 IBLA 309 (1979), aff'd sub nom.

Russell v. Peterson, Civ. No 79-949 (D. Or., June 23, 1980); United States v. Knecht, 39 IBLA 8 (1979); United States v. Bechthold, *supra*.

Appellants argue that the Forest Service, U.S. Department of Agriculture, had no authority to initiate this contest and further contend that the Department of the Interior has no jurisdiction over lands of the State of California. Appellants seem to be suggesting that title to the lands in the unpatented claims resides with the State of California. It is difficult to consider this argument as other than facetious. All land embraced within California was ceded to the United States by Mexico under the Treaty of Guadalupe Hidalgo, February 2, 1848, 9 Stat. 922. California was admitted into the Union on September 9, 1850, 9 Stat. 452. 3/

The official land status records in the BLM State Office, Sacramento, California, show that as to the W 1/2 sec. 1, T. 33 N., R. 4 W., Mount Diablo meridian, the following actions have occurred:

SW 1/4 was withdrawn for Power Project No. 397, March 8, 1923;

3/ Section 3 of the Act of September 9, 1850, *supra*, states in part:

"Sec. 3. And be it further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned * * *."

See California v. United States, 438 U.S. 645, 654 (1978); Donnelly v. United States, 228 U.S. 243, 259 (1913).

E 1/2 SW 1/4 was withdrawn under the First Form for the Central Valley Project, July 29, 1936;

W 1/2 SW 1/4 was withdrawn under the First Form for the Central Valley Project, July 16, 1947;

W 1/2 was placed in the Shasta National Forest by the Act of March 19, 1948, 62 Stat. 83;

W 1/2 was withdrawn from location, entry, and patent under the United States mining laws and placed in the Whiskeytown-Shasta-Trinity National Recreation Area by the Act of November 8, 1965, 16 U.S.C. § 460q-5 (1976).

None of the recorded actions affecting the W 1/2 sec. 1, T. 33 N., R. 4 W., have removed the land from the sovereign jurisdiction of the United States Government.

[6] The organization and duties of the Department of the Interior are set out in 43 U.S.C. §§ 1451-1457 (1976). The Department of the Interior has plenary authority over administration of public lands, including mineral lands. Best v. Humboldt Placer Mining Co., *supra*. The Secretary of the Interior is the supervising agent of the Government to do justice to all claimants and to preserve the rights of the people of the United States. Knight v. United States Land Association, 142 U.S. 161 (1891). The Secretary of the Interior has, under a grant of authority to supervise public business on public lands, including mines, the power to initiate contests through the subordinate Bureau of Land Management in order to see that valid claims are recognized, invalid ones eliminated, and the rights of the public preserved. Duguid v. Best 291 F.2d 235 (9th Cir. 1961), *cert. denied*, 372 U.S. 906 (1963).

Pursuant to a memorandum of understanding, effective May 3, 1957, between the Forest Service, Department of Agriculture, and the Bureau of Land Management, Department of the Interior, the Regional Forester will recommend initiation of contests against unpatented mining claims within national forests. Upon determining that the elements of a contest are present, BLM will issue the contest complaint stating the charges recommended by the Forest Service. Hearings will be held before Administrative Law Judges of the Department of the Interior, appointed pursuant to 5 U.S.C. § 3105 (1976), and the Government's case will be presented by a member of the Office of the General Counsel, Department of Agriculture. A mining claim within a national forest may be contested by the Forest Service at any time prior to issuance of patent. 43 CFR 1862.4.

Although the administration of the national forests is vested in the Secretary of Agriculture, the Secretary of the Interior has the responsibility of determining the validity of mining claims in the national forests and providing the administrative forum by which that Department may determine its right to possession, control, and administration of lands on which mining claims have been located within a national forest. United States v. Bergdal, 74 I.D. 245 (1967).

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the

Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies. United States v. Freese, 37 IBLA 7 (1978).

Further to undermine the argument of appellants is their occupation, over many years, of the land in the unpatented mining claims under the guise of the United States mining laws. The location notice for each claim at issue states that the claim is located in compliance with the Revised Statutes of the United States. R.S. § 2319 is derived from section 1 of the Act of May 10, 1872, 17 Stat. 91, now codified as 30 U.S.C. § 22 (1976). It provides that all valuable mineral deposits in lands belonging to the United States shall be open to exploration and purchase by citizens of the United States. R.S. § 2320, based on section 2 of the Act of May 10, 1872, and codified at 30 U.S.C. § 23 (1976), delimits the length of a mining claim along a vein or lode. The location notices of the subject claims comport with these sections of the United States mining law. Moreover, for many years Rodney Wood, a claimant, filed annual proof of labor for the claims at issue in satisfaction of the requirement in R.S. § 2324, section 5 of the Act of May 10, 1872, 30 U.S.C. § 28 (1976). In 1970, Rodney Wood, on behalf of himself, Victor Wood, Walter S. Wood, and Wallace Wood, heirs under the Estate of Walter Roy Wood, filed a notice of intention to hold the subject claims within a withdrawn area without performing assessment work as provided by the laws of the United States. It is thus

abundantly clear that these claimants have continuously considered their unpatented mining claims to be on lands of the United States and they have attempted to hold the claims through their alleged conformance with the requirements of the applicable Federal mining laws. We find their argument on appeal that the United States has no jurisdiction over the unpatented claims to be without merit.

Appellants submitted 50 proposed findings of fact and requested a ruling on each. The applicable section of the Administrative Procedure Act (APA), 5 U.S.C. § 557(c) (1976), provides:

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions --

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of --

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Of the proposed findings of fact, all except one were submitted to Judge Ratzman in 1977 following the first hearing involving these mining claims. At that time Judge Ratzman declined to pass on the proposed findings individually. The following excerpt from his decision adequately addresses and describes the largely irrelevant character of these requested findings:

The attorney for the Wood brothers filed approximately 15 pages of requested findings of fact and conclusions of law. However, the requested findings are interlarded with (1) references to mining that occurred approximately sixty years ago on claims in Section 36, to the north of the contested claims, (2) accounts of activity many years ago at a smelter at Heroult which is no longer operating, (3) generalities concerning a manganese bearing porphyry which is observable in an adjacent township, and colors and coatings on gossan and "iron cap" found on the contested claims, (4) references to general testimony about fault zones, transportation courses, fracture patterns, sulphide deposits and intrusive rock, (5) statements contending that minerals were produced and sold from one of the contested claims, based on conclusions of one Logan who reportedly has corrected or modified material in Bulletin 152, Manganese in California, Exhibit 8, and (6) descriptions of drilling and other work on claims not involved in this contest.

Clearly, these were not the findings of fact and law contemplated by the APA, supra. The Board found no error in the decision of Judge Ratzman not to pick through these proposed findings, and expressly found that appellants' APA rights had been adequately satisfied. United States v. Estate of W. R. Wood, 34 IBLA at 51. As we found no error in the declination of Judge Ratzman to rule on each of the findings, so we continue to decline to review each finding individually. See Deep South Broadcasting Co. v. F.C.C., 278 F.2d 264

(D.C. Cir. 1960); Community & Johnson Corp. v. United States, 156 F. Supp. 440 (D. N.J. 1957).

We have considered the proposed findings and conclusions submitted, and, except to the extent that they have been expressly or impliedly affirmed in this decision, they are rejected on the ground that they are, in whole or in part, contrary to the facts or because they are not relevant to the rulings that have been made. See National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645 (6th Cir. 1954); United States v. Zweifel, 11 IBLA 53, 80 I.D. 323 (1973).

Appellants also argue that the evidence of Dr. Klobusicky detracts from the negative prudent man conclusion expressed by mineral examiner Ball for the Government. In support, they cite Charlestone Stone Products Co., Inc. v. Andrus, 553 F.2d 1209, 1213 (9th Cir. 1977), rev'd on other grounds, 436 U.S. 604 (1978):

We cannot affirm the examiner's conclusion simply by isolating a specific quantum of supporting evidence. * * * Davis, 4 Administrative Law Treatise § 29.03 (1958) * * *. Evidence which may be logically substantial in isolation may be deprived of much of its character or its claim to credibility when considered with other evidence. * * * and Universal Camera Corp. v. N.L.R.B. (1951) 340 U.S. 474, 484-88.

It is conceded that Dr. Klobusicky possesses impressive qualifications as a mineral expert, but we cannot agree that his testimony and evidence preponderate over the negative conclusion expressed by the

Government's witness. In the final analysis, the greater part of Dr. Klobusicky's testimony related to land not within the 10 mining claims at issue.

[BY MR. LAWRENCE:]

Q Well, if I understand you correctly, you thereafter moved your sample points approximately one quarter mile, if I read the scale correctly, southwest, because you -- southeast -- southwest, because you were advised to do so by one of the claimants, is that right?

[BY DR. KLOBUSICKY:]

A That's right. Because I was told that I was not here at the time of sampling, but I was on the Mangenes Claim. I have no way of disclaiming or verifying this. It can be usually verified by finding the claims. I didn't do any surveying of my own.

Q Do you have any independent knowledge at all of where your sample points were then other than what the claimant may ultimately have told you?

A No, I didn't do any surveying, or didn't tie my samples to corners, claim corners. I don't know.

Q Well, isn't it true then except for the four sample points which you now state were relocated on this map, you did no sampling on the 10 claims in issue?

A That's correct, yes.

Q So you have no first-hand information as to any one of them, do you?

A No.

Q What you state then is based solely on inference that whatever may be underground may extend into one of those 10 claims?

A That's right.

(Tr. 120-21).

Dr. Klobusicky stated that he did not know the location of the corners of the claims so he could not state positively that the mineral showings he saw were on the claims.

Q In other words, whatever activity they should carry on in the future should be in a precisely opposite direction than the Manganese [sic] No. 2 Claim?

A That's right.

Q Very well. And I take it also that because of the decreasing values shown by these samples, you would not presently be in a position to recommend that further activity take place on the Mangenes No. 2, is that not also correct?

A I don't -- unless I know the exact position of my samples, it is not very hard to establish by finding the section corners, which I'm told they are all in, where the exact position is. I would need to know how much ground is there left on the Mangenes No. 2 to explore in either direction. But I'm looking at this as a mining project not as a claim line. I'm following structures not property lines.

Q Well, you understand, of course, that today's proceeding does concern property lines and claim lines?

A Yes, but it is very hard for me to understand why -- well, I have elaborated on this before.

* * * * *

Q Did you ever learn the boundaries of any of the 10 claims under consideration today?

A No. I haven't seen or looked for claim corners. I was trying to carry out the geological assignment.

Q And how did you determine where any of your samples was, in fact, taken so that you could locate them on a map?

A Mr. Rodney Wood guided me throughout my work on the property, and with each sample, as I entered the samples into my sample book, I asked him where we are at, because I

couldn't tell. I relied on the information received from him.

(Tr. 121-22, 143).

To the contrary, Dr. Klobusicky emphasized that he relied upon geological inference to suggest the presence of minerals on the claims. In response to several direct questions, he stated that much more exploration, including drilling, was necessary to determine the extent of the mineral occurrence on the claims at issue.

Q Well, you -- implicit in your recommendation, if I hear it correctly, is that they should obtain more information about what is there, is that roughly it?

A That's right. What is there was calculated and the tonnage were outlined and go in the mining procedure -- you go from the known into the unknown areas. You expand your known reserves and try to amplify your economics.

Q I assume that until they obtain this additional information, it is not your recommendation that they start mining operations?

A No, no. This is not normally being done.

* * * * *

Q Your recommendation is that you obtain more information, isn't that correct?

A Right. Expansion of the existing reserves.

* * * * *

Q Are you able to form any sort of rough estimate as to what it might cost to develop the needed information?

A Well, I will have to try to evade the question the best I can.

(Tr. 116-17, 123, 129).

Dr. Klobusicky did not recommend commencement of mining operations for either iron or manganese based on the present information.

Q What I am asking you is what percentage would you feel should be shown by your sampling before you would recommend that mining take place?

A Well, a mining project is a function of basically two economic factors; one is grade and the other is tonnage. And then the third, of course, is marketing. Manganese now in the latest issue of the Mining and Engineering Journal was quoted at \$1.40 per unit per ton, which would imply the 16 percent times \$1.40, how much -- \$18.00 or \$20.00.

Q That would be about \$22.00?

A Yes.

Q Well, would that in your opinion be a practicable operation?

A If sufficient tonnage developed.

Q Well, have you seen any indications yet that there is sufficient tonnage?

A I can't say. There could be. I can't say.

Q The determination has yet to be made I take it?

A Right.

* * * * *

Q Now if we talk a moment only about the iron deposits which are asserted to be on these claims, can you state when consideration was first given to the possibility that there might be worthwhile iron deposits on these claims?

A Well, the Wood brothers brought this property to Bunker Hill's attention in '64 as an iron ore prospect.

Q And were you involved in that particular inquiry?

A I've examined, based on their submittal, I've examined the property.

Q And did you make any report at that time as to what, if anything, should be done with the iron occurrences on the claims?

A I recommended examination in more detail, and the response was to the effects -- I have to rack my brains -- to the effect that it will be contingent, further work would be contingent upon the outcome of the ironex project.

Q Which project is that one?

A The ironex project.

Q Oh, yes.

A Which is located at one mile to the northwest of the Wood property.

Q I see. What was the nature of the additional information you thought would be required?

A Drilling of the same kind that we have carried out on the ironex property.

Q Then, after that date, it was your belief that a great deal more information would be required before any kind of mining operation could commence I take it?

A Right, that's correct.

Q Very well. Now when was attention next given, after that date, to the possibility of there being a worthwhile iron deposit, to your knowledge?

A Well, I was asked to carry out the examination of this complex of claims the beginning of '79, with the view of giving attention to any potential in the area, and that included iron, manganese, silver and gold.

Q And I take it your view still remains that more information should be developed before further -- before mining takes place, is that correct.

A That's correct.

* * * * *

Q Well, are you not saying that you have to hope for betterment of the marketing conditions before the development can proceed?

A Well, this risk is generally accepted by mining. We are developing right now zinc deposits because zinc, in spite of the fact that the zinc world markets are low, but they are not going to stay low. We have a reasonable expectation of that.

Q Well, do you know of any potential developer of this property to whom you would recommend today --

A No, I do not.

Q I didn't quite finish the sentence. You would recommend today that he would come in and develop it?

A Sorry.

Q Very well. Now I think we've been talking about the iron, potential iron deposits. Do you have any different views as to the potential magnesium deposits.

MR. MURRAY: Manganese.

MR. LAWRENCE: Manganese, excuse me.

WITNESS: Manganese is generally in short supply, but it takes a volume and grade to develop a mine. So there are indications of volume and grade, in my opinion, here based on my sampling and based on the California Report, where some quantities of ore were mined and ran on the average, I believe, 27 percent.

BY MR. LAWRENCE:

Q Do you know of any manganese user or buyer to whom you today make a recommendation in regard to this property any more enthusiastic than the recommendation you'd made in iron?

A No, I'm not familiar -- too familiar with the mining -- with the manganese ore industry.

Q Again, wouldn't it be reasonable to believe that further information would have to be obtained concerning the manganese, its quality and quantity, before anyone could proceed?

A That's right.

(Tr. 117-18, 126-27, 133-34).

No serious indications of either gold or silver were found by Dr. Klobusicky on the subject claims. The witness further declined to express any opinion as to possible profitable mining operations on the 10 claims.

[BY MR. LAWRENCE:]

Q Did you make any effort to obtain the results of the earlier drillings, the drill logs, or were you just informed that they weren't available?

A No. If they are not available, I don't know what I can do about it.

Q Who represented to you that they were not available? One of the Woods?

A Mr. Rodney Wood, yes.

Q What information was given to you by the Woods, firm information which was utilized by you in the preparation of any one of your reports, including the early Bunker Hill report?

A I was given the map by Mr. Free and the State of California Bulletin 152, and then reference was made to my own examination made in 1964.

Q And I take it no firm information was given to you as to any values in the ground --

A No.

Q -- other than this very general material?

A No, except the assay data on the maps.

Q Now turning to the -- briefly to the ironex project, you indicated, I believe, that it was abandoned at the eleventh hour because it was discovered that cheaper deposits had been uncovered in Australia, is that correct?

A That's correct.

Q Did that mean that at that point there were no longer available any buyers for the ore in that deposit?

A That correct.

Q Do you know if there have been any buyers since that day for that ore?

A Well, Oregon Steel expressed an interest and still might be holding it. I don't know who is the present owner of the deposits. So those kind of deposits that have generally an economic potential are being held by major companies as a mineral reserve, because market conditions and economic changes locally or on a world-wide scale -- if you have a significant deposit that was once already considered as an economically viable deposit being held in a mineral reserve status and pending economic, other developments.

Q Are you perhaps saying that the market has to improve in order to develop the deposit?

A Probably, yes, or a crisis or a war or -- there are many -- we have seen the last two years very drastic changes in metal prices, copper, zinc, lead, silver raised about 600 percent, gold about 1200 percent. So very drastic shifts in mineral economics.

Q Well, in any event, this particular project was abandoned, was it not, because it couldn't meet the competition provided by Australia?

A That's correct.

Q And so far as you know it has not been financially practicable to start the project up again?

A Not to my knowledge.

Q Now would the same reservations not apply to the whatever iron presence there may be on the Wood claims?

A Yes, it certainly would.

(Tr. 130-32).

We agree with Judge Clarke that the contestees did not prove that a prudent person would expend further labor and means with a reasonable prospect of developing a valuable mine.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

