

**Editor's note: Appealed -- aff'd, Civ.No. 84-1272 (D. Oreg. April 30, 1986), 642 F. Supp. 458; aff'd, No. 86-3954 (9th Cir. July 8, 1987) 820 F.2d 1535**

UNITED STATES  
v.  
ROBERT B. LARA  
(ON RECONSIDERATION)

IBLA 81-47;  
67 IBLA 48 (1982)

Decided April 30, 1984

Petition for reconsideration of decision styled United States v. Robert B. Lara, 67 IBLA 48 (1982).

Petition granted; prior decision reaffirmed.

1. Mineral Lands: Determination of Character of--Mining Claims: Placer Claims

In determining whether each 10-acre part of a placer claim is mineral in character, the claim must be subdivided to create square 10-acre parcels, to the extent possible, regardless whether the claim, as laid out on the ground, conforms to the system of public land surveys.

2. Mineral Lands: Determination of Character of--Mining Claims: Placer Claims--Rules of Practice: Government Contests

Where the evidence submitted by a Government mineral examiner supports the conclusion that a 10-acre parcel of land in a placer location is not mineral in character, the burden devolves to the mineral claimant to overcome this showing by a preponderance of the evidence, failing in which that portion shall be declared invalid.

APPEARANCES: S. Kyle Huber, Esq., Portland, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert B. Lara has petitioned this Board to reconsider its decision, styled United States v. Robert B. Lara, 67 IBLA 48 (1982). That decision had affirmed a decision of Administrative Law Judge E. Kendall Clarke declaring the Madeline Nos. 1 and 2 invalid for lack of a discovery of a valuable mineral deposit and the north half of the Sunshine placer claim

invalid because the land was not mineral in character. Appellant's petition for reconsideration is limited to the finding of invalidity of the north half of the Sunshine claim. We hereby grant the petition to reconsider our ruling as to that claim.

Appellant, in essence, makes two discrete arguments in his petition. First, he argues that inasmuch as the Sunshine claim was not aligned to the public land survey, the Board's description of the "northern half" did not specifically designate the land held to be nonmineral in character, and he further contends that the description used "does not reflect the findings in the report of mineral examination." Secondly, appellant argues that any aliquot half which might be described would, in fact, contain gold bearing gravels and thus each must be deemed mineral in character. We will discuss these points seriatim.

[1] In reviewing appellant's petition, it is clear that the Board was not sufficiently precise in describing what it intended by the "north half" of the claim.

There is confusion in using this term because appellant's claim, contrary to the applicable statute, 30 U.S.C. § 35 (1976), did not conform to the system of public land surveys. Rather, the claim consists of two 10-acre parcels aligned in a southeast to northwest direction. Thus, the "north half" of the claim might be literally interpreted to mean the 10 northernmost acres and result in a claim configuration in which the northern boundary of the portion not invalidated was no longer parallel to the southern boundary. Such, however, was not our intent.

In applying the 10-acre rule, each claim must be subdivided along the axis in which it was laid out on the ground. Inasmuch as it is presumed by the statute that a placer claim shall conform to the public land survey, the 10-acre rule is properly applied by subdividing a claim into parcels as nearly square as possible. <sup>1/</sup> In the instant case, the part which we intended to describe by the expression "north half" was that portion of the claim lying north and west of a line drawn from the midpoint of the two claim lines bearing N 33 degrees 41' W, describing a square of 10 acres.

Appellant suggests that if such a line is drawn, it necessarily includes gold-bearing gravels. We do not agree. In analyzing this issue it will be necessary to review some of the evidence presented at the two hearings. Before reviewing the evidence, however, it is important to physically describe the Sunshine claim.

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<sup>1/</sup> This will, of course, still result in a claim which is not in conformity with the public land surveys. Correction of this problem, however, is properly undertaken in the context of a mineral survey pursuant to a patent application. See generally United States v. Haskins, 59 IBLA 1, 95-100, 88 I.D. 925, 972-75 (1981); R. Gail Tibbetts, 43 IBLA 210, 219 n.3, 86 I.D. 538, 543 n.3 (1979).

For the purposes of our description, we will assume that the claim lies in a true north-south direction. Elliott Creek enters the claim on its east boundary approximately 25 feet from the south boundary. It continues on a due westerly course and exits the claim on the west boundary approximately 25 feet from south boundary. Outside the claim boundaries, however, the creek turns NNE, as a result of which it reenters the claim on the west boundary approximately 325 feet south of the north boundary. It exits the claim at the north boundary approximately 100 feet east of the west boundary. Thus, Elliott Creek is found in both the "southern" half and "northern" half of the claim. It is conceded that a discovery exists in the southern half of the claim and that this half is necessarily mineral in character. The question is whether that portion of Elliott Creek impinging upon the northwest corner of the claim is properly determined to impart that half of the claim with the mineral in character designation.

[2] Land is said to be mineral in character where the known conditions are such as would engender the reasonable belief that the land contains mineral of such quantity and quality as would justify a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. See United States v. Williamson, 45 IBLA 264, 293, 87 I.D. 34, 50 (1980). Thus, the test as to whether land is mineral in character is essentially the same as the test for discovery, with one important modification. While a discovery requires the exposure of the valuable mineral deposit (see United States v. Weber Oil Co., 68 IBLA 37, 89 I.D. 538 (1982)), the mineral character of land may be established solely by geologic inference. See United States v. McCall, 7 IBLA 21, 79 I.D. 457 (1972), aff'd, McCall v. Andrus, 628 F.2d 1185 (9th Cir. 1980), cert. denied, 450 U.S. 996 (1981). While a single exposure of a valuable mineral deposit on a claim is sufficient to meet the discovery test, where placer locations are involved the mineral claimant may be required to show that each 10-acre parcel of the claim is mineral in character, because only such mineral lands are properly acquired under a placer mining claim. McCall v. Andrus, supra; United States v. Oneida Perlite Corp., 57 IBLA 167, 88 I.D. 772 (1981).

Insofar as the Sunshine claim is concerned, two separate mineral reports were prepared by Paul F. Boswell, the Government mineral examiner. Four samples were taken in the course of the first evaluation. The first three of these (denominated as SS #1, SS #2, SS #3) were pan samples from along the creek bank. See Exh. 9 at 6; Appendix I. These samples were taken in areas where visible gold was present. The first sample site was located in the southeast corner of the claim, while the other two sites were along the creek bed after it reentered the claim in the northwest quadrant. Boswell testified that these were shallow areas where the bedrock was reachable in 9 or 10 inches (I Tr. 67). Minimal values were disclosed, the highest gold values being less than \$0.10 per cubic yard. (See Exh. 9; Appendix I).

Six months later a fourth sample was taken. This was taken from a gravel bar located in the southwest quadrant of the claim. Approximately one-fourth cubic yard of gravel was passed through a sluice box and then panned to a black sand concentrate. While this sample assayed higher than

the previous three, the values disclosed were only \$0.25 per cubic yard. Based on these four samples, the initial report concluded that there was no discovery of a valuable mineral deposit anywhere on the claim.

While Boswell had attempted to arrange a joint examination with the claimant in his first evaluation, it had proved impossible. Subsequent to the completion of the first report, appellant contacted Boswell who agreed to re-examine the claim. The claim was reexamined on March 21, 1979. Two samples were taken on what was referred to as the "gravel area" of the Sunshine claim. (See Exh. 10 at 6.) These samples, referred to as the Sunshine A and Sunshine B, were dug by a small backhoe which reached bedrock at approximately 12 feet. Both samples were located in the southwest quarter of the claim. These two samples showed averaged assayed value of \$5.23 per cubic yard.

In April 1979, seismic lines were run in the area of samples Sunshine A and B. In his second report, Boswell referred to this seismic study and concluded that it showed "there is an old, deep, buried channel that cuts under the present gravel bar" (Exh. 10 at 7). He concluded that a gouged out pocket had been formed in the area of the gravel bar which had served to trap gold over a long period of time. He estimated that there existed approximately 120,000 cubic yards of material in the area of the gravel bar, with a total recoverable value of approximately \$627,600 (Exh. 10 at 9). He determined that mining the claim over a 4-1/2-year period would yield an annual net cash flow of \$60,050 (Exh. 10 at 11-12). Thus, clearly a discovery existed within the limits of the Sunshine claim. Boswell also concluded, however, that the "land area on the upper side of the Elliott Creek Road is in the Colebrook Schists and appears to be nonmineral in character" (See Exh. 10 at 7). Accordingly, he recommended a contest of that portion of the claim that was not "below the road on the claim."

The obvious problem, which appellant points out in his petition for reconsideration, is that the road enters the claim in its southeast corner, just north of Elliott Creek, continues due west about halfway through the claim, then turns sharply northwest for approximately 450 feet, and then turns northeast, exiting the claim near the midpoint of the north boundary. Thus, if all of the area below the road is mineral in character, a good portion of the north half of the claim must also be deemed mineral in character.

Close analysis of both the mineral reports and relevant testimony, however, shows that Boswell did not intend by his reference to the area "below the road" to include any part of the northern half of the claim. Thus, his report expressly notes that "all the valuable gravel on this claim appears to be [in] the south half of the original claim" (Exh. 10 at 7). Equally probative of this point is Boswell's actual testimony at the first hearing:

Q [By Gish] Well, let me ask, do you have an opinion as to whether or not a mineral discovery exists on the claims at the present time?

A I definitely believe that in the southwest half of the claim, there's a mineral discovery, yes.

Q When you say "southwest half," this is --- (interrupted)

A Or quarter -- that area below the road and Elliott Creek, where the sample Sunshine A and B are marked.

Q And is that placer ground in that area of the claim?

A Yes, it is.

Q What kind of ground is it above the road or to the right?

A To the right, or above the road, it's part of that schist formation -- hornblende schists.

Q Is that placer ground?

A No, it isn't. That's very, very steep.

(I Tr. at 68-69.) Not only did Boswell expressly refer to the southwest "quarter," but he noted that the area "to the right or above the road" was not placer ground, describing it as "very, very steep."

Exhibits 12 and 13, which are maps of the claim showing the sampling sites, contain the notation "very steep from river to the road" and an additional notation "very steep" in the areas north of the gravel bar and west of the road. Boswell's references to the values in the southwest "quarter" are understandable since, with reference to the road, the gravel bar is both south and west. It would be inconsistent with the substance of his testimony and reports to assume that he intended to include all of the areas west of the road as valuable for placer minerals. Rather, it is clear that he was referring to the area in the southwestern corner of the claim.

Appellant argues that the only evidence that the area in the northwest quarter where Elliott Creek reentered the claim was nonmineral were the two samples taken on the first evaluation (SS #2 and SS #3). These samples, appellant contends, should be discounted since the two samples taken on the second evaluation showed substantial values which the first examinations had failed to disclose. We do not agree.

As noted above, samples SS #1, SS #2, and SS #3 were panned from the creek bank where the bedrock was within 9 to 10 inches. In obvious contra-distinction, the two Sunshine A and B samples were taken in a geographically distant area, which required use of a backhoe to reach bedrock, some 12 feet in depth. The only geographically proximate sample taken for the first evaluation was SS #4. This site was over 100 feet northwest of the nearest Sunshine sample (A). Not only is there no indication that this sample was

taken to bedrock, 2/ but the closest seismic line run in the area, S-4, showed no indication of alluvium present beneath the soil cover.

Ultimately, appellant is attempting to discount the sampling technique of a Government mineral examiner by relying on other samples taken by the same individual. If, however, Boswell's second samples were the result of valid sampling techniques, there is no reason to presume that his first samples were faulty.

Boswell's samples SS #2 and SS #3 were sufficient to establish a prima facie case that the land in the northern 10 acres of the claim was nonmineral in character. Appellant has presented absolutely no evidence to refute this conclusion. Our prior decision on this question must be reaffirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, but our prior decision invalidating the northern half of the Sunshine claim is affirmed for the reasons stated.

James L. Burski  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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2/ Indeed, the discussion of this sample in Appendix I to exhibit 9 would indicate that it was not.

