

UNITED STATES OF AMERICA v. BARBARA WINKLEY

IBLA 99-135

Decided October 15, 2003

Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer, declaring two lode mining claims null and void for lack of discovery of a valuable mineral deposit. Contest No. F-91396.

Affirmed.

1. Administrative Procedure: Administrative Review--Board of Land Appeals--Mining Claims: Contests--Rules of Practice: Appeals: Generally

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found mineral values insufficient to support a finding of discovery. In proper circumstances the Government may establish a prima facie case even though its witnesses were not physically present on the mining claims. The Government's prima facie case is not defeated by a claimant's assertion that the mineral examiner did not physically visit the claim, when the claimant fails to submit evidence that a site visit would have affected the outcome of a mineral report which was based on evidence derived from sampling during a field examination of the claims in question by another mineral examiner.

2. Mining Claims: Contests--Rules of Practice: Appeals: Generally

The Government may revisit conclusions in a mineral report prior to the time a patent issues, and is not estopped from reconsidering a claim's validity by a prior conclusion favorable to a mining claimant. The Government is not bound by a prior conclusion that a mining claim is valid where the initial analysis was based

on isolated, high value samples and mineral prices which did not properly reflect the existing market.

APPEARANCES: Barbara Winkley, Anchorage, Alaska, pro se; Joseph D. Darnell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Barbara Winkley appeals from a November 25, 1998, decision of Administrative Law Judge Harvey C. Sweitzer declaring three lode mining claims null and void for failure of the claimant to demonstrate a discovery of a valuable mineral deposit, after a hearing conducted in response to a mining contest complaint submitted by the Bureau of Land Management (BLM) challenging the validity of six mining claims: the Ringer # 4, Ringer # 5, Ringer # 77, Barbara # 1, Barbara # 2, and Barbara # 3 mining claims situated within T. 1 N., R. 41 W., Kateel River Meridian, Alaska.^{1/} At the contest hearing, Winkley challenged BLM's contest with respect to only three of the mining claims: the Barbara # 2, Ringer # 4, and Ringer # 77 mining claims. (Nov. 28, 1998, Judge Sweitzer Decision at 14.)^{2/} On appeal to the Board, Winkley challenges the decision only to the extent that Judge Sweitzer invalidated the Ringer # 4 and Ringer # 77 lode mining claims. (Reasons at 4.)

Background

Winkley located the Ringer # 4 mining claim (FF 65532) on August 2, 1969, and the Ringer # 77 (FF 65534) mining claim on August 2, 1970. See Exhibit (Ex.) B, 1996 Mineral Report, Ronald L. Teseneer (Teseneer Report), Attachment (Attach.) S8 Attach. 3.)^{3/} She located the six mining claims at issue in the contest between

^{1/} The mining claims were serialized as FF 65532, FF 65533, FF 65534, FF 65263, FF 65264, and FF 65531, respectively.

^{2/} Winkley does not contest the facts as stated by Judge Sweitzer. (Jan. 22, 1999, Reasons for Appeal and Post Decision Brief (Reasons) at 4.)

^{3/} BLM's exhibits are listed in alphabetical order, while Winkley's are listed in numerical order. This decision discusses and explains below three reports prepared by Teseneer (Ex. B), James Deininger (Ex. 16), and Travis Hudson (Ex. B Attach S8 Attach. 14). Identifying the Teseneer and Hudson reports is complicated by the fact that Teseneer's report is comprised of a series of attachments containing the 1996 report (Attach. S8) and subsequent updates as described below (Attachs. S1-S7), while the 1996 report is also comprised of a series of attachments (Attach. S8 Attachs. 1-14) including, lastly, the Hudson report. To add to the confusion, the Teseneer summary is paginated with pages S1 et seq.

During the 20th century, the Port Clarence Mining District encompassed hundreds of mining claims and was explored considerably for various minerals. In particular, information regarding the area was provided in a 1908 report by Knopf and 1961, 1963, 1964, 1969 and 1972 reports by Dr. C. L. Sainsbury.^{4/} In more recent years, companies including Anaconda Minerals Company, Placer Dome U.S., Inc., Arctic Mining Systems, and Topping & Associates conducted various surveys, including magnetometer surveys, within the vicinity. See generally Teseneer Report, Ex. B. Attach. S8 at 25-27; Hudson Report, Ex. B. Attach. S8 Attach. 14 at 5-6. The various reports describe the history of exploration in the area, and particularly the “Idaho deposit” or “Idaho prospect” running through the region.

The mining district had an early 20th century history of tin mining. In the second half of the century, miners located claims in the area for acid grade and metallurgical grade fluorspar. (Ex. 16, 1990 Mineral Report of James Deininger Jr. (Deininger Report) at 17-19.) Fluorspar is the commercial name for fluorite, which is a combination of calcium and fluorine (CaF₂). (Teseneer Report, Ex. B Attach. S8 Attach 10 at 9-12; see also Dictionary of Mining, Mineral, and Related Terms, U.S. Department of the Interior (definitions of “fluorspar,” “fluorite”).) With the rise in use of chlorofluorocarbon propellants, demand for fluorite increased in the mid-20th century. Fluorspar is also a component of certain products made for metallurgical use.

After Winkley located her mining claims, the lands on which they were located were withdrawn from mineral entry by Public Land Order (PLO) 5170, 37 FR 5573 (Mar. 15, 1972), because they were selected by the Bering Straits Native Corporation under section 12 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1611(a)(1) (2000). (Ex. B Attach. S-8 at 5.) The selected land, excluding existing rights, was conveyed to the Native Corporation on July 7, 1981.

On September 14, 1981, Winkley submitted four mineral patent applications for the six mining claims. (F 74628, F 74629, F 74630, F 74631; see Ex. B Attach. S1, 1995 Master Title Plat depicting locations of four patent applications).^{5/} The first half of the final certificate for the patent applications was issued on October 9,

^{4/} Sainsbury, at one time a geologist for the United States Geological Survey, oversaw a government-funded exploration project at the Lost River mine, north of the Barbara claims, in the 1950s. (Decision at 3; Teseneer Report, Ex. B Attach. S8 at 17; Hudson Report, Ex. B Attach. S8 Attach. 14 at 5; Ex. 15).

^{5/} Winkley had submitted applications in 1979, which were rejected for failure to pay service fees. (Ex. 16 at 3; Ex. 3, Apr. 13, 1979, decision.)

1986. (Ex. B Attach. S8 at 6; Ex. 10.) In 1983, mineral examiner James Deininger, BLM, initiated a field examination of the property for purposes of evaluating the patent applications. Winkley, however, asked that the examination be delayed for a year. (Ex. 5, June 14, 1983, letter from Winkley to BLM.) Deininger returned in 1985, and between the two field examinations, took ten samples for purposes of evaluating the patent applications.

Deininger prepared a 1986 Mineral Report. Deininger submitted it for approval and it was returned with comments in 1987. (Transcript of Hearing, Mar. 11, 1998, (Tr.) 100-01.) In 1989, he submitted it to Burrett Clay, BLM Certified Review Mineral Examiner, at the Phoenix Training Center, BLM, for technical review. (Decision at 6; Ex. 10; Tr. 100.) The parties agree that the 1989 draft was lost in the mail en route between Alaska and Phoenix. It was reconstructed and signed by the BLM District Manager in Alaska in 1990. (Ex. 16, Oct. 16, 1986, Mineral Report of James Deininger, revised 1989 and 1990.) Clay reviewed and approved it on August 21, 1990. (Decision at 6; Exs. 10, 16; Tr. 100-01.)

In his report, Deininger recommended clearlisting the Ringer # 4 and Ringer # 77 mining claims for patent. He concluded that the Ringer # 4 mining claim had sufficient “fluorspar mineral” within the limits of the claim to constitute a valid discovery.^{6/} His conclusion with respect to the validity of the Ringer # 77 was less definitive but he suggested it had “potential for the production of a lead-silver concentrate.” (Ex. 16, Deininger Report at 2, 22.) He recommended that Winkley’s other four mining claims be rejected for failure to contain a discovery. *Id.* at 2.

Subsequent to Deininger’s 1986 report and during its reconstruction, Travis Hudson, ultimately Winkley’s mining partner, set about preparing a report regarding the Barbara mining claims. (Teseneer Report, Ex. B Attach. S8 Attach. 14.) Based,

^{6/} On Jan. 17, 1969, the Secretary of the Interior issued PLO 4582, which withdrew all unreserved public lands within Alaska from appropriation or selection under the public land laws, with the exception that mining claimants could locate lands for metalliferous minerals. (34 FR 1025 (Jan. 22, 1969).) This PLO was extended by a series of PLOs and continued in effect until Dec. 18, 1971, the date of ANCSA’s passage. (PLO 4962 (Dec. 11, 1970); PLO 5081 (June 24, 1971).) In *David Budinski*, 31 IBLA 139, 140-41 (1977), the Board upheld a BLM decision declaring null and void *ab initio*, under PLO 4582, mining claims located for non-metalliferous minerals. The impact of this PLO on the mining claims at issue in this case was not addressed by BLM or Judge Sweitzer. To the extent Winkley asserts that the Ringer # 4 claim contains a discovery of a valuable deposit of fluorspar, a non-metalliferous mineral, this contention raises the issue whether this mining claim would be null and void *ab initio* absent location for a metalliferous mineral. We need not address this issue since we affirm Judge Sweitzer with respect to that mining claim.

inter alia, upon reports prepared by Knopf and Sainsbury, and a sample found in the mining district by Placer Dome, Inc., the March 1990 Hudson Report concluded that the Barbara # 1 and # 2 claims were located on the conjunction of the Rapid River and Lost River faults along the Idaho prospect, and that this portended a massive sulfide deposit with exceptional economical value at a depth of 300 to 500 feet. Id. Largely adopting Deininger's conclusions with respect to costs and prices, Hudson reached a far more favorable conclusion with respect to the Barbara # 1 and # 2 mining claims than did Deininger as a result of inference of a "sulfide assemblage" from the sample taken by Placer Dome, Inc. (Ex. 7.) Hudson argued that a sample relied on by Deininger was taken from an oxidized zone from which metals had been leached, but that the large sulfide zone representative of prospects potentially converging under the two Barbara claims contained high metal contents of copper, zinc, tin, tungsten, and silver. ^{Z/}

In November 1989, Winkley requested that she be allowed to submit new information for BLM to consider and incorporate into the Deininger Report. (Tr. 102.) Winkley clearly intended that Hudson's efforts would change the outcome of the Deininger Report with respect to the validity of the two Barbara claims.

Based on the Hudson report, BLM met with Winkley and agreed to reevaluate the Barbara claims and the Deininger Report, which Winkley contended was premised on flawed sampling data. (Tr. 31; Exs. 10, 11.) According to an internal memorandum, BLM was concerned that the data presented by Hudson suggested the possibility of a discovery on the two Barbara claims that was not verified by sample data. (Winkley Post-Hearing Brief, Attach. B, 1991 Memorandum from Deputy State Director for Minerals, to District Manager, Kobuk.) On July 29, 1991, the Alaska State Director ordered a reexamination of the Barbara claims and chose that it be conducted by new mineral examiners to avoid Winkley's criticism of Deininger. See Ex. 10, Att. 1-3 (referring to July 15, 1991, letter from Winkley to State Director citing problems with Deininger Report.) An internal memorandum describing a telephone conversation with Winkley indicates that BLM advised her that the new examination would be conducted by persons other than Deininger in order to accommodate her concerns. (Ex. 11.)

BLM geologists including Earl Boone and Ronald Teseneer, Alaska State Office, conducted a field examination of the Barbara # 1 and # 2 claims during August of 1991, taking seven samples from the two Barbara claims. See Teseneer Report, Ex. B Attach. S8 at 72. They prepared a draft mineral report in 1992, which

^{Z/} The geology and mineralogy of the Barbara claims is presented in detail in the Hudson, Deininger, and Teseneer Reports, and to a lesser extent in Judge Sweitzer's decision. Because Winkley does not challenge Judge Sweitzer's conclusion with respect to the Barbara claims, this abbreviated summary suffices here.

was revised in 1993. It appears from the record that, relying on the Hudson Report, Boone and Teseneer were under the impression that the Barbara # 2 mining claim had a potentially valuable discovery. (Ex. 10; see also Ex. 12.)

As a result of the conflicting conclusions found in the two BLM reports, on April 21, 1994, Review Mineral Examiner Clay withdrew the technical approval of the Deininger Report. He concluded that the two reports prepared by Deininger and by Teseneer and Boone should be revisited and that their conclusions ultimately should be reconciled and combined into a single report of the BLM. (Ex. 13; Decision at 8.) He noted numerous concerns which needed to be addressed in the combined report before it would pass technical review, including the fact that the two reports reached different recommendations regarding the same mining claim, contained different prices for the target metals, and failed to adequately combine the mining operations to avoid duplication of facilities and equipment. Id.

Subsequently, Teseneer and Boone prepared a mineral report covering all four patent applications and all six claims, entitled “Mineral Patent Application of Barbara Winkley for the Barbara #1, Barbara #2, Barbara #3, Ringer #4, Ringer #5, and Ringer #77 Lode Mining Claims” and dated July 1, 1994. (Ex. B Attach. S8.) The mineral report reconsidered all of Deininger’s conclusions, including those with respect to the Ringer # 4 and # 77 claims. Teseneer and Boone prepared various mine plan scenarios and concluded that none of the six mining claims contained a discovery. With respect to the Barbara # 2 mining claim, they ultimately agreed with Deininger because they concluded that there was no evidence of the existence of Hudson’s projected massive deposit. Id. at 29.^{8/} They concluded that sample data did not verify the “hypothetical sulfide body” predicted by Hudson and therefore that none of the Barbara claims contained a discovery of a valuable mineral deposit.

Teseneer and Boone rejected Deininger’s conclusions regarding the Ringer # 4 and Ringer # 77 mining claims because they disputed his interpretations of sample data. With respect to the Ringer # 4 claim, Teseneer and Boone rejected Deininger’s conclusion regarding the grade and quantity of fluorite on the claim. In 1981, Deininger had collected two chip channel samples from the Ringer # 4. (Deininger Report at 20, 21.) Sample 830501 showed a fluorite value of 47.5%, while sample 830502 showed a value of 12.5%. Id. at 22. Deininger ignored the sample containing lesser value when concluding that the mining claim showed potential for a successful operation. His report stated: “For the Ringer #4 and #5 claims, sample 830501 assay [47.5%] has good potential for the production of both acid grade and metallurgical grade fluorspar products from a two product floatation mill.” Id.

^{8/} “There is no information that connects the surface exposure to the inferred sulfide body and depth. * * * [T]here is no exposure to verify this, or to even indicate that there is significant sulfide mineralization on the BARBARA #2.” Id.

Deininger prepared his mining report presuming a 47.5% assay grade of fluorite in a proposed mine with an 85% recovery rate. Id. at 24, 34.

Deininger's reserve estimates were similarly simplistic. Deininger stated that reserves "estimated by Lost River Mining based on drill intersections total 1,778,760 tons. It is estimated that Ringer #4 claim encompasses approximately ½ of the zone or 889,380 tons." Id. at 34, citing "Sample 830501." ^{9/} Deininger repeated this assertion without further explanation on page 50, citing reserves of "47.5% fluorspar (CaF₂) based on the assay results of sample 830501." Id. at 50.

Deininger analyzed the value of the mineral on the mining claims for 1972 and 1986, the year the property was withdrawn and the year the first half final certificate issued, using market prices for fluorspar for those years. ^{10/} His report states that he chose "the highest monthly average commodity price" for the ten years preceding each year in question from the Engineering and Mining Journal. Id. at 23. For fluorspar, he chose prices from United States producers:

	1972	1986
Metallurgical CaF ₂ (60%)	\$61/ton	\$125/ton
Acid grade CaF ₂ (97%)	\$61/ton	\$173/ton

(Ex. 16 at 24.) He considered mining and transportation costs and concluded, based on the 85% assumed recovery from sample 830501, that the Ringer #4 could justify a successful operation in 1972:

The proposed mill is to produce 4 tons of metallurgical grade fluorspar for each ton of acid grade fluorspar. Since it takes 1.5 tons of mine run ore to make 1 ton of metallurgical grade (60% CaF₂) product and 2.4 tons of mine run ore to make 1 ton of acid grade (97% CaF₂) product, it

^{9/} The Lost River Mining Corporation had conducted exploration activities in the Lost River valley during the 1960s and 1970s which culminated in the Lost River Mine Feasibility Report. (Decision at 3; Hudson Report, Ex. B Attach. S8 Attach. 14; Teseneer Report, Ex. B Attach. S8 at 19, 39; Ex. 16 at 1.) Teseneer reports that "none of this work" was completed on the mining claims in Winkley's patent applications. (Ex. B Attach. S8 at 39.) Whether the Teseneer and Hudson Reports are referring to the same Lost River analyses is unclear.

^{10/} See United States v. Collord, 128 IBLA 266, 268 (1994), aff'd in relevant part, rev'd in part, Civ. No. 94-0432-S-EJL (D. Idaho Sept. 28, 1994), aff'd 154 F.3d 933 (9th Cir. 1998) (on remand for attorneys' fees) ("In the case of land withdrawn from mineral entry and the subsequent issuance of a final certificate by BLM, a valuable mineral deposit must be shown to exist on the dates of withdrawal and of issuance of the certificate.").

would take a total of 8.4 tons of mine run ore to make 5 tons of products in the right proportions. Mill recovery is estimated at 85%. With this concentration ratio of 1.68:1 these reserves are calculated to produce 105,881 tons of concentrate in a ratio of 4:1 metallurgical grade to acid grade over the life of the mine (6.14 yrs.). At 1972 market prices of \$61.00/ton for either acid or metallurgical grade, a 5 ton unit is valued at \$305.00. Since it takes 8.4 tons of mine run ore to produce this 5 ton unit, a ton of mine run ore is valued at \$36.31. Gross value of the reserves is then \$32,294,114. Less transportation costs of \$72.04/ton of concentrate the net value of the reserves equals \$24,666,447. Capitalization of a 330 TPD surface mine and single product floatation mill is estimated at \$9,516,522 in 1972. Construction of a port facility would add an estimated \$6,167,570 to the capital costs bring[ing] the total capital costs for this project to \$15,684,092. On the operating side of the balance sheet, operating costs for the surface mine/mill in 1972 are estimated to be \$23.44/ton ore mined. Port facility operating costs, are estimated at \$0.57/ton ore mined. Ore carrier rates are estimated in the Lost River Feasibility Study [at] \$8.40/ton. Transportation prorated over a cost per ton mined (\$8.40/1.68) equal \$5.00. When added to the mine/mill operations the total 1972 operating costs are estimated at \$29.01/ton of ore mined. The value of a ton of mine run ore exceeds operating costs by \$7.30/ton mined.

(Ex. 16 at 50.)

The Deininger Report's figures did not support a successful operation in 1986. Deininger inflated the 1986 value of acid grade fluor spar from the \$173 reported in his own price conclusions to \$175, and then, despite reporting a loss of \$1.45 per ton mined even at that price, stated that he would nonetheless validate the mining claim.

At 1986 market prices of \$125.00/ton for metallurgical grade and \$175.00/ton of acid grade, a 5 ton unit is valued at \$675.00. Since it takes 8.4 tons of mine run ore to produce this 5 ton unit, a ton of mine run ore is valued at \$80.36. Gross value of the reserves is then \$71,472,184. Less transportation costs of \$28.93/ton of concentrate the net value of the reserves equals \$68,409,047. Capitalization of a 480 TPD surface mine and two product floatation mill is estimated at \$26,222,395 in 1986. Construction of a port facility would add an estimated \$14,798,940 to the capital costs bring[ing] the total capital costs for this project to \$41,021,335. Operating costs for the surface mine/mill in 1986 are estimated to be \$63.64/ton ore mined. Port facility operating costs, are estimated at \$0.95/ton ore mined. Ore

carrier rates estimated in the Lost River Feasibility Study add an additional \$17.22/ton mined (\$28.93/1.68) to the operating costs which when added to the mine/mill operations bring the total 1986 operating costs to \$81.81/ton of ore mined. Estimated 1986 operating costs exceed value of the mine run ore by only \$1.45/ton mined. This small difference is certainly within the limits of accuracy of the cost estimate.

(Ex. 16 at 50-51 (emphasis added).) Accurate use of Deininger's own price figure (\$173) would have further reduced the value in 1986 dollars.

The Teseneer Report reconsidered the Deininger data, eschewing the former's reliance only on favorable figures and data for the Ringer # 4 claim. Teseneer and Boone took into account both chip channel samples. By contrast with the Deininger Report, Teseneer and Boone included geological and geophysical maps of the claims based on data presented in the 1969 Sainsbury Report. (Teseneer Report, Ex. B Attach. S8 Attach. 6.) Considering this information, they set forth a map of the Ringer # 4 and # 5 claims, showing fluorite distribution. *Id.* at 6-7. Considering both samples taken by Deininger in 1981, they calculated an average fluorspar grade of 30% for the Ringer # 4.

The area of fluorspar veining on the RINGER #4 is limited, covering only a small portion of the claim (See Attachment 6, p. 6-7.). These vein systems are assumed to contain the weighted average grade for the RINGER #4. The vein systems average about 25 feet wide and the longest vein was mapped at about 500 feet long by Sainsbury (1969, Plate 6.) The veins are assumed to have similar grades and widths to a depth of 250 feet. There is approximately 8,400,000 cubic feet of fluorspar vein material on the RINGER #4. If the vein material is assumed to be fluorspar (30%) and remainder to have a density similar to that of limestone, there is approximately 730,505 short tons of vein material on the Ringer #4, grading as shown in Table 7.

(Ex. B Attach. S8 at 35.)

With respect to commodity prices for fluorspar, Teseneer and Boone rejected Deininger's use of domestic prices. They explained that 85% of fluorspar consumed in the United States during the period in question was imported and that domestic fluorspar mines closed due to the low price of Mexican fluorspar. *Id.* at 79. "Any fluorspar produced from the Lost River valley would have to compete on the world market, thus would be competing directly with the Mexican fluorspar." *Id.*; see also Teseneer Report, Ex. B Attach. S8 Attach. 10-12 (Mexico was primary producer of fluorspar from 1972-86, with China gaining market share to second place). Teseneer

and Boone chose the following market prices, based on the “Mexican 10-year average, constant 10th year dollars”:

	1972	1986
Metallurgical CaF ₂	\$50/ton	\$97.38/ton
Acid grade CaF ₂	\$64.50/ton	\$129.29/ton

(Teseneer Report, Ex. B Attach. S8 at 80, Tables 39 and 40.) Considering these prices, and operating expenses in various mining configurations, the Teseneer Report was unable to construct any mining operation for the Ringer # 4 alone or in conjunction with the Barbara claims that did not lose money for either 1972 or 1986. Id. at 104-13; see also Teseneer Report, Ex. B Attach. S8 Attachs. 8-4, 8-5, and 9-2.

With respect to the Ringer # 77 mining claim, Teseneer and Boone disagreed with Deininger because the latter’s conclusion with respect to a potential mine was premised on inference from a single sample that was not supported by any surrounding information. Deininger took three chip channel samples from the Ringer # 77 claim in 1985. (Deininger Report at 21.) Two of the samples from the “rust dike” showed no significant mineralization for lead or silver. Id. at 22 (850505, 850506). The third sample 850507 showed values of 5.2% for lead and 5.548 ounces per ton of silver. Id. As he had done with respect to the Ringer # 4, Deininger constructed a scenario for mining based on extrapolating for the entire mining claim the results of the single positive sample. “Sample 850507, from Ringer # 77 claim shows potential for the production of a lead-silver concentrate from a single product floatation mill.” Id. Sample 850507 was described as “talus rubble gossan.” Id. at 21; see also Teseneer Report, Ex. B Attach. S8 at 71. ^{11/}

Without explanation, Deininger used this sample to project a vein with dimensions “2 feet thick by 600 feet strike length by 951 feet below drift.” Id. at 33. On this basis he “inferred” 322,000 tons of reserves, 319,129 of which were “possible stoping reserves vein extensions within claim boundaries.” Id. at 33, 46. He proposed a “small scale underground drift mine/mill model, for inferred reserves of 322,000 short tons with a run of mine grade of 4.3% lead and 4.577 [ounces per ton] silver.” Id. at 40, 46. Based on commercial prices of lead and silver for 1972 and 1986, he concluded that the Ringer # 77 had potential for a valuable mine.

^{11/} The record contains several indications, including in citations found within this decision, that sample 850507 was taken from float or talus. The description of sampling performed by Deininger does not clarify this. Such samples cannot form the basis for discovery of a lode claim. United States v. White, 118 IBLA 266, 315, n. 25 (1991); see also United States v. Highsmith, 167 IBLA 262, 269 (1996), aff’d, 198 F.3d 1072 (9th Cir. 1999). Given that we affirm Judge Sweitzer’s decision, we need not further investigate this issue.

Teseneer and Boone rejected projections based on a single sample.

Sample 850507 was taken from one of four widely separated localities where limonite gossan float containing galena was discovered. Three of these locations were not on the claim. The fourth location, where sample 850507 was taken, was located near the southern end of the Ringer #77. Without additional word to show continuity and extent, it must be considered an isolated high grade occurrence, that warrants additional exploration work. It cannot be used to meet the requirements of discovery, and is therefore not considered further.

(Teseneer Report, Ex. B Attach. S8 at 36.) Teseneer and Boone went on to calculate the average of the two samples taken by Deininger, taken from the “rust dike,” to estimate the potential mineral content from the samples.

Samples 850505 and 850506 were taken from the Rust dike, which crosses the claim from east to west, just to the south of the mid-point of the claim. The two samples each sample one-half of the dike width, and combined sample the entire width of the dike, including contact zones. The weighted average grades of these two samples are presented in Table 8.

* * * * *

The Rust dike is 8 feet wide, and as it extends almost directly across the Ringer #77, the portion of it on the claim is about 600 feet long. This gives a total area for the Rust dike on the claim of 4,800 square feet. The grade and width of the dike are assumed to be relatively consistent for a depth of 400 feet. This would give a total resource of 1.92 million cubic feet, or 149,000 short tons, assuming that the dike has the same density as rhyolite at the above grades. [shown in Table 8]

Id. at 36-37; see also Tables 8, 9. Based upon the analysis of these samples, Teseneer and Boone reported average grades of .014% lead and .020 ounces per ton of silver and concluded that they were not present in “possibly significant quantities.” Id. at 37.

The Teseneer Report concluded that the Government should initiate a contest with respect to all six Winkley mining claims. The report was approved on February 21, 1995. (Teseneer Report, Ex. B Attach. S8.)

Winkley objected to the conclusions in the Teseneer Report and asked that she be permitted to drill the Barbara # 1 and # 2 claims to verify the existence of the

sulfide deposit postulated in the Hudson Report. (Decision at 10; Tr. 37.) In May 1995, the Alaska State Director agreed to the request and “suspended issuance of the mineral contest complaint until September 30, 1996,” permitting Winkley time to conduct drilling. (Teseneer Report, Ex. B Attach. S8 at page S2.) The decision was made “[i]n the interest of being fair to the claimant, and because of the convoluted past history of these applications.” Id.

Both Deininger and Teseneer were among those present when the drilling took place. Id. The drilling information, assay results and analysis of mining potential are presented in the Teseneer Report at Attachs. S2-S7. Teseneer supplemented the Teseneer and Boone report to incorporate his analysis of the new 1995 drill hole data. The drilling refuted the existence of the massive sulfide body predicted by Hudson. “While geophysics indicated what was interpreted to be a large sulfide body at depth on the BARBARA #1 and BARBARA #2, there is no evidence of this sulfide body in either of the diamond drill holes.” (Teseneer Report, Ex. B at S25; see also summary tables S6, S7, S8 and S9 (diamond drill core samples summaries, and results of mineral analyses).) Teseneer’s amendment to the report was ultimately approved on February 1, 1996.

BLM issued contest complaint F-91396 on June 14, 1996, charging that none of the claims disclosed a valid discovery within the boundaries of the claims on the relevant dates. On July 25, 1996, Winkley answered by denying all charges in the complaint. Judge Sweitzer conducted a hearing on March 11, 1998. The government presented Teseneer as its witness, and Winkley presented Deininger and expert Joseph Drechsler Jr. for her rebuttal case.

In its prima facie case, the Government presented the Teseneer Report and Teseneer’s testimony regarding how he and Boone derived their conclusions. On cross examination, Winkley and her expert Drechsler briefly questioned Teseneer as to his conclusions. On rebuttal, Winkley testified as to the history of the dispute and her frustrations with the process which began at the time of her patent applications. (Tr. 88-89.) She complained that Deininger’s conclusions with respect to the Ringer # 4 and # 77 mining claims should not have been permitted to be revisited once his 1990 report was approved. Id. at 90, 136-39.

Deininger testified “to the facts and not to give any kind of * * * expert opinion.” (Tr. 98.) He testified that he used a computer program in which he could insert particular parameters for reaching his conclusions, id. at 118-19, and also with respect to his views of a “policy change” in BLM’s dealing with mineral patent applications. Id. at 126-27. He stated that the “political climate, from what I’ve seen, has made mineral patenting as, as a much tighter process. You have to be much more specific in the information that you use to put together models * * *.” Id. at 131.

Drechsler testified as to his experience with drilling the Barbara # 2 mining claim. With respect to the Ringer # 4 and # 77 claims he stated: "We do know there is a good fluorite on Ringer Number 4" and "I have not looked at Claim Ringer 77." (Tr. 184-85.) Drechsler also testified that Mexican producers "dictate the world price" of fluorite. Id. at 184.

After the hearing the parties submitted post-hearing briefs. In her post-hearing brief, Winkley asked that the contest be dismissed with respect to the Barbara # 2, and Ringer # 4 and Ringer # 77 mining claims. (June 4, 1998, Post-Hearing Brief at 12; see also Tr. 170.) Winkley's principal concern was her view that, at least with respect to the Ringer # 4 and Ringer # 77 mining claims, the Deininger Report was "more reliable and valid" than the Teseneer Report. She objected variously to the latter's use of computer generated models, and the fact that Teseneer did not visit the sites for those two claims, but rather relied on Deininger's sampling data. She objected to cost analyses presented by Teseneer which relied on Western Mine Engineering's Mining Cost Service mine/mill cost summaries. See Winkley's Post-Hearing Brief at 4-7. Winkley also objected to use of the Teseneer Report because she asserted that it was based on "irrelevant policy considerations" that had resulted in a Departmental decision to apply more careful scrutiny to patent applications and make "mineral patenting a much tighter process." Id. at 8-9. Finally, Winkley argued generally in favor of Deininger's conclusions with respect to the Ringer # 4 and Ringer # 77 mining claims. Id. at 10-11.

Judge Sweitzer found that a "full consideration of the evidence, as governed by the pertinent law, leaves no option but to conclude that the preponderance of the evidence does not show a discovery of a valuable mineral deposit on any claim, either on the date of withdrawal or on the date of issuance of the first half of the Final Certificate." (Decision at 29.) Judge Sweitzer found that the Government had presented a prima facie case, and that Winkley's frustrations at the process did not meet her burden of refuting the elements of the Government's case or show that the claims were valid.

Judge Sweitzer found that Teseneer had presented a prima facie case with respect to the Ringer # 4 mining claim. Judge Sweitzer found that Teseneer's use of the 30% average grade based on the two relevant samples comports with accepted practice for establishing a representative value for mineralization on a claim. (Decision at 20, citing United States v. Mavros, 122 IBLA 297, 309 (1992); United States v. Bechthold, 25 IBLA 77, 88 (1976).) He found that Deininger's unsubstantiated rejection of the lower assay value did not sufficiently refute the Government's prima facie case. When considering the market price of fluorspar, Judge Sweitzer stated that Teseneer provided a detailed and persuasive explanation of why Mexican, rather than domestic, market prices reflected the price which

Winkley could have expected to receive, and also that Winkley's own witness Drechsler confirmed this element of the Government's case. (Decision at 20-21.)

With regard to the Ringer # 77 mining claim, the Judge noted that Teseneer had presented a prima facie case that no discovery was shown on the claim and that Winkley failed to refute it. Judge Sweitzer noted Teseneer relied upon the samples taken by Deininger in reaching his conclusions and both Teseneer and Deininger agreed that the rust dike was "un-mineralized" or lacked fluor spar or other mineralization of economic significance. (Decision at 18, Ex. B Attach. S8 at 74-76, 108; Ex. 16 at 12-13, 46; Tr. 65-66.) The Judge agreed with Teseneer that there was simply no evidence that the high lead values contained in the single isolated sample used by Deininger persist elsewhere on the Ringer # 77 claim. The Judge concluded that this isolated showing of high value did not support a conclusion that continuous mineralization existed on the claim or the existence of a valuable mineral deposit. (Decision at 19, citing United States v. Winters, 78 I.D. 193, 199 (1971); United States v. Houston, 66 I.D. 161, 166 (1954).)

Judge Sweitzer also noted that Deininger's assumptions of an estimated horizontal strike length of 600 feet extending 951 vertical feet below the drift for a total of 322,000 tons of "inferred" reserves were not supported by facts in the record. Analyzing the evidence, Judge Sweitzer stated that it appeared that the strike length was simply chosen to coincide with the width of the claim. He noted that Deininger himself acknowledged that the "nature of the occurrence was indeterminate in the field" and that its "relationship to the documented mineralizing events of Lost River is not known." The Judge stated that "there is no adequate basis for concluding that Mr. Deininger determined the quantity of mineralization by reasonable geologic means or that a discovery of a valuable mineral deposit was made on the Ringer No. 77 Claim." (Decision at 19-20, citing Deininger Report at 13, 30, 33, 36, 46.)

Judge Sweitzer dismissed Winkley's contention that Teseneer's Report must be rejected because he failed physically to examine or sample the Ringer # 4 and Ringer # 77 claims. (Decision at 12, citing United States v. Zweifel, 11 IBLA 53, 89, 80 I.D. 323, 339 (1973), aff'd sub nom. Roberts v. Morton, 549 F.2d 158 (10th Cir. 1977), cert. denied, 434 U.S. 834 (1977).) Judge Sweitzer also rejected Winkley's suggestion that it was unfair for the Government to reexamine the validity of the Ringer # 4 and # 77 mining claims, relying on the Secretary's continuing duty as guardian of the public lands. (Decision at 15-16.)

Winkley appealed Judge Sweitzer's decision with respect only to the two Ringer claims. Her statement of reasons largely repeats her contentions before Judge Sweitzer that it was inappropriate or unfair for the Government to reconsider or revisit Deininger's conclusions once presented in an approved report, and that the

process was impermissible. (Jan. 22, 1999, Reasons.) She alleges the following ten concerns:

1. The Decision is in part based on the Judge's reliance on work done by an unregistered field examiner * * *.
2. To assume a fluorspar grade figure of 30 percent is more representative of the ore tenure on Ringer No. 4 claim without examining the claim in the field is an erroneous conclusion, particularly as it is contrary to a BLM field examiner's observations. This erroneous assumption leads to unreliable results in the mineral report and incorrect conclusions of a lack of a discovery on the claim.
3. Arbitrarily "correcting" Mr. Deininger's work without substantiating the validity of those corrections in the field constitutes faulty logic and yields to unreliable conclusions.
4. Mr. Clay's revocation of his approval of the Deininger Report, according to the written record, failed to use "a lack of valid discovery" as a reason for revocation, thus showing an arbitrary element.
5. Recommending the calculations of mining costs that would combine a small lead-silver mining method and recovery facility with a sizable fluorspar operation close to a mile away from the smaller lead-silver deposit is attempting to direct an approach a reasonably prudent man would not choose to establish a case against the Contestee.
6. Communications between BLM and the offices of U.S. Senator Frank Murkowski and Congressman Don Young indicate that the BLM technical reviewer withdrew technical approval of the first mineral report (to avoid having two approved mineral reports on the same claims, which may or may not have the same recommendations). * * * [These documents] further substantiate the arbitrary nature of the withdrawal of approval, not based on a lack of discovery, but on possible conflicts emerging within the BLM organization regarding the claims in question.
7. The subsequent combining of the initial mineral report with [the Barbara Nos. 1 and 2 mining claims] lead to an erroneously altered initial report to conform to the desires of the author of

the newly combined report, rather than utilizing the observations found in the initially approved report to guide the conclusions of the new report.

8. Due to the arbitrary alterations of Mr. James Deininger's initial mineral report, the final report of Mr. Ron Teseneer falsely concludes that there was a lack of discovery on Ringer No. 4 and Ringer No. 77 mining claims.
9. To combine the production and mining plan for the Barbara No. 1 and Barbara No. 2 claims, (already acknowledged by Mr. Deininger to lack a discovery) with production from Ringer No. 4, a mining claim deemed to contain minerals of sufficient quantity and/or quality to constitute a valid discovery is unjustifiably diluting the property in a manner that a reasonably prudent man would not pursue, and represents an erroneous approach to valid mineral examination procedure.
10. The Decision fails to acknowledge the occurrence of silver in economic quantities on Ringer No. 77 mining claim, and thus fails to consider revenue from the silver yield in the mining plan.

(Reasons at 1-3.)

In addition to these assertions, Winkley argues that Teseneer's failure to visit and examine the site makes his report impermissible as an element of the Government's prima facie case. *Id.* at 5. Winkley asserts that because he visited the site, Deininger's report "could only be impeached by another Government geologist who had visited the claims and proven his altered viewpoint with physical observation of the facts." (Reasons at 6.) Finally, Winkley objects to Teseneer's rejection of sample 850507 on the Ringer # 77 mining claim as anomalous because he did not visit the site and Deininger's visit to the site allowed him to "[realize] the sample was not anomalous." (Reasons at 6.)

ANALYSIS

The Mining Law of 1872, as amended, permits location of valuable mineral deposits on the public lands of the United States. *See generally* 30 U.S.C. §§ 21-47 (2000). Lode claims may be located along veins or lodes of "rock in place bearing gold, silver * * * or other valuable deposits." 30 U.S.C. § 23 (2000). A mining claim can only be validated by the discovery of a valuable mineral deposit. *Cameron v. United States*, 252 U.S. 450, 459 (1920); *Best v. Humboldt Placer Mining Co.*,

371 U.S. 334, 335 (1963); see also 30 U.S.C. § 29 (2000) (patenting process for valid mining claims); United States v. Clouser, 144 IBLA 110, 113 (1998); United States v. Williamson, 45 IBLA 264, 277-78, 87 I.D. 34, 41-42 (1980).

A discovery 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 paying mine.” Castle v. Womble, 19 L.D. 455, 457 (1894). This test was approved by the Supreme Court in Chrisman v. Miller, 197 U.S. 313, 322 (1905). See also United States v. Clouser, 144 IBLA at 113. A mining claimant must show, as an objective matter and “as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood of success that a paying mine can be developed.” In re Pacific Coast Molybdenum, 75 IBLA 16, 29, 90 I.D. 352, 360 (1983). In United States v. Coleman, 390 U.S. 599, 600, 602-03 (1968), the Supreme Court declared that the discovery of a valuable mineral deposit requires a showing that the deposit is ultimately marketable at a profit. In United States v. Clouser, the Board identified the nature of the costs and receipts that are to be considered in making a validity determination: “[A] mineral deposit will be considered valuable where there is a reasonable likelihood that the value of the deposit exceeds the costs of extracting, transporting, processing, and marketing it.” 144 IBLA at 113 (citations omitted).

The contestant (Government) bears the burden of making a prima facie case in support of its allegations that the contested claims are invalid. United States v. Boucher, 147 IBLA 236, 248-49 (1999). The Government “establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.” United States v. Dresselhaus, 81 IBLA 252, 257 (1984); Hallenbeck v. Kleppe, 590 F.2d 852, 859 (10th Cir. 1979). The Government may make its prima facie case by “presenting evidence that the mineralization fails to satisfy the prudent man test in one or more respects.” United States v. Multiple Use, Inc., 120 IBLA 63, 83 (1991). The determination of whether or not the Government has presented a prima facie case is to be made solely on the evidence adduced during the Government's case-in-chief. United States v. Miller, 138 IBLA 246, 269 (1997); United States v. Knoblock, 131 IBLA 48, 101 I.D. 123 (1994).

If a prima facie case is established, the burden shifts to the contestee (the mining claimant) to overcome that case by a preponderance of evidence.

Once a prima facie case is presented, the burden then shifts to the claimant and it is incumbent upon the claimant to present evidence which is sufficient to overcome the Government's case on the issues raised. United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert.

denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); Cactus Mines, Ltd., 79 IBLA 20 (1984); United States v. Rice, 73 IBLA 128 (1983).

United States v. Gillette, 104 IBLA 269, 273 (1988). “If, upon the completion of the Government's presentation, the evidence is such that, were it to remain un rebutted, a finding of invalidity would properly issue, a prima facie case has been presented and the burden devolves on the claimant to overcome this showing by a preponderance of the evidence.” United States v. Willsie, 142 IBLA 241, 262 (2000) (citations omitted).

While the Government may bear the initial burden, it is the claimant who is the ultimate proponent of the validity of his claim and, where a prima facie case of invalidity has been established, it is the claimant who bears the affirmative burden of refuting the Government's case by a preponderance of the evidence. See, e.g., United States v. Mineco, 127 IBLA 181, 187 (1993), and authorities therein cited.

Ray Rothbard, 137 IBLA 159, 164 (1996).

[1] We agree with Judge Sweitzer that the Government established a prima facie case. As noted above, the determination of whether or not the Government has presented a prima facie case is to be made solely on the evidence adduced during the Government's case-in-chief. United States v. Knoblock, 131 IBLA at 48, 101 I.D. at 123. The Government presents such a case when a mineral examiner “testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.” United States v. Boucher, 147 IBLA at 248, citing United States v. Dresselhaus, 81 IBLA at 257. Even if the Government merely shows that one essential criterion of the discovery test was not met, it has established a prima facie case as to that criterion. Id.

Teseneer's testimony and the report he prepared with Boone were sufficient to show that the mineralization fails to satisfy the prudent man test. United States v. Multiple Use, Inc., 120 IBLA at 83. While it is true that the Government witness, Teseneer, did not physically examine the Ringer # 4 and Ringer # 77 mining claims, he testified that he and Boone examined information derived directly from sampling the claims and that critical criteria of the test of discovery cannot be shown from the data.

Winkley contends that the failure of the mineral examiners to physically visit the Ringer # 4 and Ringer # 77 mining claims defeats the Government's prima facie case. Board precedent, however, rejects this notion. “In the proper circumstances the Government may establish a prima facie case even though its witnesses were not

physically present on the mining claims.” United States v. Zweifel, 11 IBLA 53, 89, 80 I.D. 323, 339 (1975), aff’d sub nom. Roberts v. Morton, 398 F. Supp. 87 (D. Colo. 1975), aff’d, 549 F.2d 158 (10th Cir.), cert. denied, 434 U.S. 834 (1977); United States v. Copple, 81 IBLA 109, 118 (1984); United States v. Rukke, 32 IBLA 155, 163 (1977). While Winkley objects to applying this line of precedent here, she does not point to any instance in the Government’s presentation of its case in chief that calls into question whether BLM presented a prima facie case of invalidity. It is not enough simply to assert that they did not physically appear on the site to refute BLM’s prima facie case.

Winkley asserts that, had the examiners visited the Ringer # 77 mining claim, this would have permitted them to “[realize] the sample was not anomalous.” (Reasons at 6.) The basis for this vague assertion is unclear. To the extent, however, Winkley’s argument that Teseneer and Boone should have visited the site is based on the unstated presumption that, were they to be required by this Board or Judge Sweitzer to do so, they would have conducted more sampling that might be favorable to her, she misunderstands that the Government bears no burden of exploring her claims for her. The “Government has no obligation to do the discovery work for the mining claimant or to do more than simply examine the claim to verify whether there is a discovery of a valuable mineral deposit located within its limits. To drill or otherwise establish the existence and extent of a mineral deposit sufficient to meet the prudent man test of discovery is the obligation of the mining claimant.” United States v. Bechthold, 25 ILBA 77, 84 (1976) (citations omitted). Moreover, “for the claims to be valid a discovery of a valuable mineral deposit must be shown to have existed prior to a valid withdrawal.” United States v. Foresyth, 15 IBLA 43, 48 (1974). It is incumbent upon Winkley to submit on rebuttal evidence that her claims are valid. A prima facie case cannot be overcome by arguments that the mineral examiner did not do the sampling and assaying that might have proven the existence of a discovery.

Winkley also cites the Deininger Report in asserting that the Government failed to show a prima facie case. The Government met its burden in presenting its case by presenting the Teseneer Report and his testimony. The Deininger Report was not part of the Government’s prima facie case and was properly not a part of Judge Sweitzer’s consideration in deciding whether the Government met its initial burden.

[2] The time to consider the Deininger Report came when Winkley presented it as her rebuttal evidence. The question for Judge Sweitzer was whether the report sufficiently refuted the Government’s prima facie case with respect to the validity issues presented regarding the Ringer # 4 and Ringer # 77 claims, or whether Winkley sufficiently demonstrated that it undermined the Government’s case. While we empathize with Winkley’s frustrations at the process in which Deininger indicated a conclusion that was later rejected by his employer, we agree with Judge Sweitzer

that neither the Deininger Report, nor Winkley, explained Deininger's various conclusions in a way that refuted the Teseener Report with respect to the two mining claims. In particular, Judge Sweitzer's concerns that the Deininger Report failed to substantiate its own conclusions with respect to both quantity and quality of the mineral are well-founded in precedent. See Decision at 18-22.

A valuable mineral deposit is not proved by an isolated bit of mineralization. See 2 Am. L. of Mining § 35.11(3)(b).

A discovery cannot be predicted upon (1) the exposure of * * * isolated bits of mineral on the surface of the claim, not connected with ore leading to substantial values, (2) the finding of mere surface indications of mineral within the limits of the claim, (3) the discovery of valuable mineral deposits outside [the] claim, or (4) inferences from established geological facts relating to the claim. The mere hope or expectation that values will increase at depth is not sufficient to constitute a discovery.

Id. at 35-40 to 35-41 (footnotes and citations omitted).^{12/}

As Judge Sweitzer noted, the Board has rejected use of an isolated sample to support a showing of the quantity of a mineral.

Proof of quantity is crucial to establish the existence of a valuable mineral deposit. See United States v. Crowley, 124 IBLA [374, 385 (1992)]. Isolated showings of high values of gold will not alone suffice to demonstrate the existence of a valuable mineral deposit. United States v. Parker, [82 IBLA 344, 368-69, 91 I.D. 271, 285-86 (1984)]. * * * Rather, there must be evidence that the high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means. United States v. Parker, 82 IBLA at 368-69, 91 I.D. at 285-86; United States v. Weekley, 86 IBLA 1, 6 (1985).

United States v. Bagwell, 143 IBLA 375, 391-92 (1998).

^{12/} "The existence of valuable minerals on a claim, based solely on geologic inference, cannot serve as a predicate for a finding of quantity and quality sufficient to support a discovery on that claim. United States v. Feezor, 74 IBLA 56, 85, 90 I.D. 262, 278 (1983)." United States v. Dresselhaus, 81 IBLA at 265.

With respect to both claims, the Deininger Report shows that he took several samples. In each case, he extrapolated from the single highest value sample a deposit across the mining claims, without supporting explanation for the size of the deposit projected or for his rejection of the lower value samples. Rather, he appears to have rejected them because they would not have supported his conclusion of validity. With respect to the Ringer # 4, Deininger did not explain why he rejected a competent sample which would reduce the value of the mining claim. With respect to the Ringer # 77 mining claim, Deininger's own report undercut his confidence in sample 850507 as the basis for inferred reserves of 322,000 short tons. Referring to sample 850507, he stated: "These shows are of very limited extent and do not appear to be related to the dike intrusion or to any contact effects of more distant granite intrusives. Apparently they represent some mineralization in open shear zones in the limestone caused by regional faulting, fracturing, and metamorphism of the limestone. Their relationship to the documented mineralizing events of Lost River is not known." (Ex. 16 at 13.) Later, he noted again that the nature of the occurrence was "indeterminate in the field." Id. at 46.

Thus, in each case, Deininger's report undercuts any conclusion that "high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means." United States v. Parker, 82 IBLA at 368-69, 91 I.D. at 285-86. Deininger ignored assay results from other samples and his own analysis showing that the high values did not persist on both claims, but nonetheless projected reserve bases from single, isolated high value samples. Like Judge Sweitzer, we must reject Winkley's assertions that the Deininger Report is more reliable than the Teseneer Report. The same conclusion follows the discussion of fluor spar prices with respect to the Ringer # 4 claim. Winkley does not suggest that use of Mexican prices was in error, particularly in light of her own witness Drechsler's admission regarding that topic. (Tr. 184.)

It is worth noting that Deininger testified that, while preparing his report, he was under the impression that the Government did not hold him to a standard with respect to his mineral examination that he later learned was expected. The "political climate, from what I've seen, has made mineral patenting as, as a much tighter process. You have to be much more specific in the information that you use to put together models * * * ." (Tr. 131.) Rather than supporting the notion that the mining claims were valid, his testimony suggests his own conclusions might have been different if he had followed a more careful standard, been "more specific," or tightened his own analysis.

Judge Sweitzer's analysis of the competing reports and the sampling data, in light of precedent regarding proof of discovery, is reasonable, logical and verified in the record. See Decision at 18-22. Winkley fails to explain why Judge Sweitzer's

conclusions that Winkley did not overcome the Government's prima facie case were wrong or why we should revisit them. Examining her ten assertions of error (Reasons at 1-3), we do not find that any one establishes a serious rebuttal of an element of the Government's prima facie case.^{13/}

Winkley did not meet her burden to overcome the elements of the Government's prima facie case by alleging that the process should not have been as it was. There is no basis in law or precedent for endorsing her suggestion that once Deininger signed his report, the Government could not revisit his conclusion. "BLM may raise any applicable deficiency in the location, recordation, or maintenance of a mining claim so that the Department of the Interior may properly fulfill its duty to see that 'valid claims [are] recognized, invalid ones eliminated, and the rights of the public preserved.'" Allen C. Kroeze, 153 IBLA 140, 144 (2000), citing Cameron v. United States, 252 U.S. at 460; see also United States v. Knoblock, 131 IBLA at 78, 101 I.D. at 139. "Until the United States surrenders the last vestiges of title by issuing patent to the ground, 'it does have the power, after proper notice and upon adequate hearing, to determine whether the claim is valid, and if it be found invalid, to declare it null and void'." Sigma M. Explorations, Inc., 145 IBLA 182, 191 (1998), quoting Best v. Humboldt Placer Mining Co., 371 U.S. at 337-38, quoting Cameron v. United States, 252 U.S. at 460.

Failing to substantiate her claim that Teseneer and Boone were wrong in their analysis of the sample assay data, the core of Winkley's argument is that it was unfair to her or even illegal for BLM to reopen Deininger's conclusions. We find no basis for reaching such a conclusion of law or of fact in this case. As a matter of law, it was incumbent upon BLM, faced with conflicting views of its mineral examiners to reconcile its case into a single unified position. Winkley may have a legitimate belief that had BLM simply chosen not to look at Deininger's conclusions with respect to the Ringer # 4 and # 77 claims, she may have been awarded patents to two mining claims on the basis of analysis which Judge Sweitzer later found flawed in comparison to Teseneer and Boone's more careful consideration of all the samples. However, no legal principal estops the Government from reconsidering the analyses of its experts before a patent has issued. To the contrary, estoppel "does not lie if the effect of such action would be to grant an interest not authorized by law." Alfred G. Hoyl, 123 IBLA 169, 194U (1992), reconsideration granted, decision modified on

^{13/} While she argues the significance of the evidence of silver on the Ringer # 77 claim (Contention 10), this was not a contention advanced by either Teseneer or Deininger, nor was it an element of proof in Winkley's case. Her complaints that the Government should not have combined a fluorspar operation on the Ringer # 4 claim with any operation on the Barbara claims (Contentions 5, 9), discounts the Teseneer Report's consideration of various mine configurations and its failure to substantiate a discovery with respect to any one plan. See Ex. B Attach. S8 at 104-113.

other grounds; see also United States v. Fisher, 115 IBLA 277, 284 (1990) (Secretary not estopped by actions of her subordinates from declaring a mining claim invalid prior to issuance of patent). That a claimant might have benefitted from a prior result in her favor does not constitute any of the necessary elements of estoppel.

The facts in this record reinforce our conclusion. In 1989, Winkley approached the Government with complaints that Deininger's report was inadequate and unacceptable, asking instead that Hudson's report be substituted. In opening the question and objecting to the quality of the Deininger Report, she is in no position now to complain that the Government listened and reassigned the examination to other mineral examiners. Nor has she supported her argument that the Deininger Report undermines any particular conclusion reached by the later examiners with respect to the Ringer # 4 or Ringer # 77 mining claim.

Finally, Winkley's ten enumerated arguments express a sense of unfairness in the process and her view that BLM's motivations derived from an environment of requiring stricter focus on proof of validity in approving patent applications. Even if we could find BLM to be in error by requiring a higher standard of care, and we do not, BLM's motivation "when initiating a contest against a mining claimant is irrelevant to a determination of the existence of a discovery. United States v. Opperman, 111 IBLA 152, 157-58 (1989) * * *." United States v. Page, 119 IBLA 12, 23 (1991); see also United States v. Mineco, 127 IBLA 181, 191 (1993). We find that Winkley has failed to overcome the Government's prima facie case with respect to the Ringer # 4 and Ringer # 77 mining claims.

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.

Lisa Hemmer
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge