

BUREAU

OF

LAND MANAGEMENT

5186

60000302

Supplemental
Mineral Character Determination
as of Feb. 18, 1901, of lands in
Transportation Act Application Nev 058575
of the
Southern Pacific Company

UNITED STATES

DEPARTMENT OF THE INTERIOR

For U S Government Use Only

65

Serial Number

Nev 058575

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

State Nevada

MINERAL REPORT

5186
60000302

Supplemental
Mineral Character Determination
as of Feb. 18, 1901, of lands in
Transportation Act Application Nev 058575
of the
Southern Pacific Company

(Title)

LANDS INVOLVED

Washoe County, Nevada
M.D.M.
T. 20 N., R. 20 E.
Sec. 29, SE $\frac{1}{4}$
containing 160 acres

FEB 5 1973

(Date)

By

Robert T. Webb
Supervisory Mining Engineer

Technical Review



Management Review



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This report is the result of a mineral character determination of lands as of February 18, 1901 and should not be used for purposes other than that for which the report was prepared.

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Introduction

This report supplements earlier reports [Alexander M. Peterson 11-7-62 (unapproved), Harrie W. Mallery 10-14-66 & 1-24-69] regarding the mineral character of the SE $\frac{1}{4}$, Sec. 29, T. 20 N., R. 20 E., MDM. It is an attempt to assemble and itemize the known facts in order to determine the proper disposition of an application by the Southern Pacific Company in behalf of the heirs of George H. Wedekind for title to the subject land under provisions of the Transportaiton Act of 1940.

By Decision IBLA 70-90 dated Oct. 7, 1970 (Exhibit A), the case was remanded for a hearing to determine:

- (a) What was the character of the land from the time the railroad was definitely located to and including the time of purchase from the railroad.
- (b) If the land was mineral in character at any time during such period, was George H. Wedekind an innocent purchaser.

The lands involved lie about four miles northeast of Reno and immediately north of Sparks. The 160 acres has an estimated value for subdivision in excess of \$500,000. It is, therefore, important that care be taken in assembling all pertinent facts so that a fair decision can be made.

Historical Background

The line of the Central Pacific Railroad (now Southern Pacific Transportation Co.) was definitely established on April 23, 1865 (Exhibit B). George H. Wedekind purchased the subject 160 acres for \$800 which was received by the Railroad on February 8, 1901. A quit claim deed was issued to him on February 18, 1901.

One issue is, therefore, the mineral character of the land between April 23, 1865 and February 18, 1901.

The original survey plat dated June 30, 1872 contains no notation of mineral indications. It is, therefore, a reasonable assumption that the land would have been considered nonmineral in character at that time.

Section 33, which corners on the subject land was patented to the Railroad on December 5, 1876. The NE $\frac{1}{4}$ of Section 32, which adjoins the southern boundary of the subject land was patented as a cash entry on February 11, 1890. Since both Railroad selections and case entries must, by law, be on nonmineral ground, the presumption is that the vicinity of the subject land would have been considered as nonmineral at that time. Exhibit C depicts these relationships.

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The first indication that minerals were recognized in the area was the location of the Reno Star lode claim on August 8, 1897. George H. Wedekind was the locator. The Reno Star was not actually located on Section 29 but about 60 feet southeast of it on part of Section 28 and on previously patented land in Sections 32 and 33 (see Exhibit C).

George H. Wedekind, a piano tuner by trade, began to explore the Reno Star. He found a significant ore deposit containing rich silver, lead and some free gold. The deposit was near the western side of the Reno Star on patented land in Section 33 and close to the Section corner of Sections 28 - 29 - 32 - 33.

The exact date of his discovery is unknown. However, it can reasonably be inferred as being early in 1900, probably April. On April 6, 1900, George H. Wedekind located another claim, the Reno Belle and on April 15, 1900 his wife, Helene Wedekind, located the Helena. Starting in May of 1900, a rush of claim staking took place in what was named the Wedekind Mining District. Between 100 and 200 claims were located throughout 1900 in the Wedekind District covering virtually all of the available land for a mile or so around the Reno Star. Some of these claims, which had descriptions or later surveys accurate enough for plotting, are shown on Exhibit D.

George H. Wedekind and his relatives joined in the claim staking chiefly in the SE $\frac{1}{4}$, Sec. 29. A resume of their activities before and during 1900 follows:

<u>Claim</u>	<u>Location Date</u>	<u>Locators</u>
Reno Star	8-21-97	George H. Wedekind
Reno Belle	4-6-00	George H. Wedekind
Helena	4-15-00	Helene Wedekind
Eagle	6-4-00	George H. Wedekind
Sunshine	8-18-00	George H. Wedekind
Fourth of July	8-18-00	George H. Wedekind
Helena Extension	8-18-00	George H. Wedekind
Reno Belle Extension	8-18-00	George H. Wedekind
Empire	11-24-00	J. L. Wedekind*
		J. W. Thompson
		C. L. Crane

(* J. L. Wedekind was George H. Wedekind's son.)

On August 27, 1900 George H. Wedekind gave the Reno Belle and Reno Belle Extension to his children, John L., L. S., and Henry L. Wedekind and Elizabeth Laden.

The producing shafts on Wedekind's claims were in the extreme northwest corner of Section 33 and the extreme southwest corner of Section 28. It is unknown whether any production came from the southeast corner of Section 29. The poorly defined structure of the ore body trends northwest toward Section 29 and dips westerly toward Section 32.

Since most of the workings were on patented Section 33, Wedekind purchased the patented land involved on December 7, 1900.

As Wedekind followed the ore body down dip under Section 32 he ran into litigation. Charles B. Bell, et al. owned that portion of Section 32 and had sunk a shaft down to the ore body. This mine was known variously as the Bell shaft and the Desert King Mine. On January 17, 1901, Bell sought and received an injunction to prevent Wedekind from mining under Section 32 (Case No. 4394).

Less than a month later, on February 8, 1901 Wedekind paid the railroad for the SE $\frac{1}{4}$, Sec. 29 and received a quit claim deed on February 18, 1901.

Events that followed provide additional insight into the mineral character of the land.

On April 10 and 13, 1901, George H. Wedekind located the Safeguard and Precaution claims respectively. These claims trended northwesterly and overlapped the Reno Star and other prior claims (Exhibit E). The Safeguard was subsequently surveyed. Wedekind filed a counter suit against Bell (Case No. 4427) on May 15, 1901 which sought extralateral rights to the southwest under Bell's property.

While this suit was pending, Wedekind sold the Reno Star, the portions of the Eagle, Safeguard and Precaution claims lying east of the Reno Belle and his land in Section 33 to John Sparks (from whom the town of Sparks derives its name) on June 27, 1901.

The court case of Wedekind vs. Bell (Case No. 4427) was settled in favor of Wedekind on July 25, 1901. The judgement held that the vein apexed on the Safeguard claim outside of Section 32 and that Wedekind therefore had exclusive right to follow it down dip under Section 32. Bell was permanently enjoined from further interference. The court also made an observation on the mineral occurrence based on the testimony received. The court found:

"That within the exterior limits of said Safeguard Mining Claim and premises described, and extending throughout the whole length of said mining claim, there is a certain vein, lode, ledge or deposit of rock in place, bearing gold, silver and other valuable minerals, the top or apex of which lies within the said mining claim and premises, (and does not lie within the boundaries of said section thirty-two), which said vein, lode, ledge or deposit, on its courses downward, extends into said Section thirty-two beneath the surface thereof."

Although the case was appealed to the Nevada Supreme Court, that body dismissed it on the grounds that the issue was moot, John Sparks having acquired Bell's property in the interim (Case No. 1,619, July 10, 1902).

The August 22, 1903 issue of the Engineering and Mining Journal (p. 275) carried an article entitled "Hydro-Thermal Activity in the Veins at Wedekind, Nevada" by Henry C. Morris. The article described the Wedekind ore deposit and provided a sketch map of the underground workings. Morris describes the deposit as two zones striking northwest and dipping to the west. The ore zone described is quite irregular, difficult to follow and has little surface expression. He states:

"Although the well-travelled Spanish Springs Road and the big Orr ditch parallel each other not 100 Ft. from the discovery shaft, and cross the rich float scattered by the lode, so that every traveler must have kicked it aside or ground it underfoot, they failed to recognize the fact that it was rich ore; similarly the laborers upon the Orr ditch, which has been in use for 20 years or more, must have shoveled aside hundreds of dollars' worth of this rich rock without suspecting its value. That this happened in a perfectly open country, and where every man considers himself a prospector, is explained by the appearance of the ore, which hardly differs at all from the ordinary detritus of the region."

and:

"Indeed, one can hardly say that there is any outcrop, since it only comes to the grass-roots and does not project above the surface nor show any evidence of its existence except by the float."

and:

"For a distance of 60 ft. between B and shaft M on an approximate east and west line the ore comes to the grass-roots; while 150 ft. to the north (not mapped) the first evidence of ore is 60 ft. deep. The covering is ordinary country rock."

and in proposing a hypothesis

"The strongest reasons for supposing this is the fact that, while the whole District has been deeply and very uniformly altered by hydro-thermal action, this is the only known ore deposit. Other shafts, from half a mile to a mile distant have tapped ground similar in appearance to that of the conglomerate and carrying traces of gold and silver, but there the similarity ends."

Morris sums up his article with:

"The world-renowned Comstock is some 15 miles farther to the south and east. With that as an incentive, and the Wedekind as an encouragement, it will be strange if we do not hear of further mineral discoveries in the near future."

A resurvey of part of the Township was made between December 1905 and March 1906. The resulting plat, dated February 19, 1907 was noted:

"Deputy returns mineral indications in Secs. 20, 21, 28 & 29."

On March 24, 1911 the General Land Office issued charges that Section 29 is mineral in character. The railroad company answered but stated that their denial of mineral character did not extend to the E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 29. Litigation followed and on April 23, 1917 the Court of Appeals conclusively declared the land mineral in character (46 app D.C. 372).

Exhibit F is an outline summary of the above history.

Character of the Land

The standards employed to determine whether land is mineral in character have changed over the years. In 1901 the standard most frequently used was that of comparative value. Lands found to be more valuable for mining than for agricultural use were determined to be mineral in character.

The standards began to change in 1914 (Cataract Gold Mining Co., et al, 43 L.D. 248) and by 1919 had evolved into the standards used today:

"It is not essential that there be an actual discovery of mineral on the land. It is sufficient to show only that known conditions are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end. Such belief may be predicated upon geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are shown to be accustomed to act." United States v. Southern Pacific Co., 251 U.S. 1, 14 (1919); Southern Pacific Co., A-29856 et al (May 27, 1964); State of California v. Rodeffer, 75 ID 176 (1968).

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The series of decisions resulting from the General Land Office charges of March 24, 1911 clearly used the early comparative value standard in determining that the lands were mineral in character. In reviewing the evidence presented at a hearing held on January 9, 1912, the Commissioner of the General Land Office observed in his decision of December 15, 1915 that:

"From all the testimony in the record with reference to these locations, it cannot be held that the evidence shows that on any one, has such a discovery of mineral been made as to satisfy the requirements of the law in that respect, in order to perfect a mining location."

And further:

"The evidence neither proved nor disproved that the land contains valuable mineral deposits. The preponderance of the evidence considering the number of Witnesses, their acquaintance with the land, their experience as miners and prospectors, the indications of mineral on and near the land as testified to by them, establishes that the land has a prima facie mineral character, having a prospective value for mineral, which is greater than any other value that the land is known to have."

The E $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 29 was not included in this part of the Commissioner's ruling because:

"With respect to the tract as to which no denial of the charge was made, and no appeal from your decision [Registrar and Receivers decision of Jan. 29, 1915] taken, said decision has become final and said list is hereby cancelled as to said E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 29. So note your records."

On appeal, the Secretary held:

"As to appellants second contention, it may be said that a showing may be presented which is sufficient to warrant the classification of land as mineral in the broader sense of that term, but which would be insufficient as a basis for mineral patent." Central Pacific Ry. Co. 45 L.D. 25 (April 7, 1916).

How do the hearing and subsequent rulings relate to the mineral situation on the ground as of February 18, 1901 in the first instance and to the current standards of mineral character in the second instance?

Mineral Situation as of Feb. 18, 1901

The 1912 hearing contained voluminous and contradictory testimony. A few months prior to the hearing a new mineral strike, the Arkell,

had been made in the SW $\frac{1}{4}$ of Sec. 28 about 1000 feet northeast of the Wedekind mine. This strike resulted in a new flurry of mining claim locations that covered much of the land in the vicinity including land covered by some early, previously abandoned locations.

This situation must have closely paralleled the original activity in 1900 after the Wedekind strike. The major difference would be that by 1911 a better understanding of the geology and ore occurrence could be expected. Indeed, the Arkell strike would seem to justify the interest that the earlier locators had shown in the general area.

Two witnesses at the hearing had been employed at the Wedekind property about the time that Wedekind purchased it from the railroad.

C. L. Crane, a witness for the government, testified that he had been Superintendent of the Wedekind Mine for three years starting in May 1901 when John Sparks acquired the property. Prior to that he had purchased the Empire claim from John Wedekind (Crane was also one of the original locators of the claim which was located on November 24, 1900) and worked it. He indicated that part of the Wedekind Mine extended onto Section 29 and that all of Section 29 was mineralized and similar in appearance to the land at the Wedekind Mine.

Carl Stoddard, a witness for the railroad company, was an assayer for the Wedekind Mine in 1901 at the time of the lawsuit between Sparks and Bell. Prior to that, in 1900 when Wedekind first discovered the mine, Stoddard located one or two claims on Section 29 near the center which he shortly abandoned. He contended that a northeast trending black dike (spelled dyke in the transcript) outcropped 300 feet west and a little north of the SE corner of Sec. 29 and that southeast of this dike there was the mineralization of the Wedekind Mine but west of the dike the ground did not have this mineralization.

A prospector, George J. Smith, testified for the government that he had the Metallic claim in about 1900. He had it surveyed for patent (Survey No. 2067, January 27, 1903) but withdrew the patent application because the railroad company and the Wedekind parties threatened him. The claim is situated in the center of Section 29, partially within the SE $\frac{1}{4}$. Although Smith's testimony is somewhat confusing, he stated that the Metallic claim was mineralized and that he had a massive ore body that ran about \$1.50 to \$2.50 in gold and 2-3 ounces of silver. He believed that he could profitably mine this material.

In summary, then, the known conditions as of February 18, 1901 were:

- (1) A major mineral discovery, the Wedekind Mine, had been made about 10 months before. The deposit extended throughout the whole length of the Safebuard claim which extends into the subject land (Wedekind v. Bell Case No. 4427).
- (2) The SE $\frac{1}{4}$ of Sec. 29 as well as surrounding lands had been blanketed with mining claims in the excitement that followed the Wedekind discovery.
- (3) The ore deposit at the Wedekind mine was irregular, difficult to follow and had little surface expression. The appearance of the ore was similar to the ordinary detritus of the region and in some places came to the grass-roots while in other places it occurred only at depth.
- (4) The entire area, including all of the SE $\frac{1}{4}$ of Sec. 29 was hydrothermally altered and in many places carried some values in gold and silver. The surface appearance was similar to that of the Wedekind mine.
- (5) No other actual discoveries had been made, but the prospectors in the area held the belief that the land contained mineral that would justify their expenditures in searching for it. Extensive expenditures were made for such purposes and numerous shafts were dug. At least one prospector, George J. Smith, believed he had found a mine that might be profitably worked on the Metallic claim. This general belief extended over an area surrounding the Wedekind mine and some 11 years later was proved justified by the discovery of the Arkell mine 1000 feet east of the subject land.

In considering this data I conclude that the known conditions were such that both the early comparative value standards and the standards employed today with regard to mineral character were met. The land was mineral in character as of February 18, 1901.

Innocence of the Purchaser

The Transportation Act of 1940 allows the issuance of patents confirming the title to such lands as the Secretary of Interior finds have been sold by the railroad to "an innocent purchaser for value." This phrase is merely another way of saying a "bona fide purchaser." Southern Pacific Company 77 I.D. 41 (1970).

What constitutes a bona fide purchaser was defined in United States v. Central Pacific Railway Co. 84 Fed. 218, 221 (Cir. Ct. N. D. Cal. 1898):

"... the status of a bona fide purchaser is made up of three essential elements: (1) a valuable consideration; (2) absence of notice; and (3) the presence of good faith."

or as restated in Southern Pacific Co. 77 I.D. 41 (1970):

"A bona fide purchaser is one who purchases property
(1) in good faith, (2) for a valuable consideration,
(3) without notice of a defect in the grantors title."

There is no question that George Wedekind purchased the SE $\frac{1}{4}$, Sec. 29 for a valuable consideration. He paid \$800 for it. The remaining questions to be determined are: was he without notice either actual or constructive, of a defect in the grantors title; and did he purchase in good faith?

If the land was mineral in character at any time between the time the railroad was definitely located and the time the land was purchased, the title is defective. This is so even if the land had been mined out and become nonmineral prior to the purchase. Southern Pacific Co. (op. cit.). In the instant case, the land was mineral in character prior to and at the date of purchase. hence, the title was defective. If George H. Wedekind knew or should have known that the lands were mineral in character at that time, he is charged with having notice.

Did George H. Wedekind have notice of the defect? The factual data gathered show:

- (1) Wedekind and his immediate family located (or were co-locators of) nine lode claims on and adjacent to the SE $\frac{1}{4}$, Sec. 29. Seven of these claims were either partially or entirely within the SE $\frac{1}{4}$, Sec. 29. All were located prior to the purchase.
- (2) Wedekind was mining a valuable ore body immediately adjacent to and partially within the subject land. He was doing so prior to the purchase from the railroad, at the time of the purchase and subsequent to the purchase.
- (3) The entire area was blanketed with other mining claims prior to the purchase. These claims were properly recorded and adjoined and surrounded his property. Physical work was being done on these claims. It is inconceivable that he was unaware of all of this activity around him. Mute evidence to this exists in the fact that the location notice by George Wedekind for the 4th of July Mine ties the claim to the Lilly Mine which adjoins it on the west and was located on May 23, 1900 by H. D. Ramsay and Mathew Kyle.

The inescapable conclusion is that George H. Wedekind was fully aware of the mineral character of the land at the time of purchase. He had notice.

Did George H. Wedekind purchase the land in good faith? The following data bear on this issue:

- (1) Louis G. Wedekind, grandson of George H. Wedekind, in an affidavit dated Feb. 23, 1970 alledged that the purpose for which George H. Wedekind purchased the property was for real estate development in anticipation of the expansion of Wedekind City, a settlement in close proximity to the Wedekind Mine. Louis G. Wedekind would be one of the beneficiaries of any patent issued to the railroad company in this case.
- (2) Helen Laden Wagner, granddaughter of George H. Wedekind in an affidavit dated December 2, 1968 alledged that the only use to which George H. Wedekind put the property was for housing employees for the mine. She alledged that this was the reason he purchased the land. Mrs. Wagner would be one of the beneficiaries of any patent issued to the railroad in this case.

Actions that George H. Wedekind took subsequent to the purchase may bear on his good faith, i.e. what did he want the land for and did he consider that the title he obtained from the railroad was sound? He took these actions:

- (1) He located the Safeguard mining claim on April 10, 1901, immediately had it surveyed and the survey was approved on June 15, 1901 (M.S. 1949). This claim contained the Wedekind mine and overlapped the earlier Reno Star claim. It extended into the subject land and figured prominently in the Wedekind v. Bell litigation.
- (2) He located the Precaution claim on April 13, 1901. This claim adjoined the Safeguard and apparently protruded only slightly into the SE $\frac{1}{4}$ of Sec. 29.
- (3) The May 31, 1901 Reno Evening Gazette had a story indicating that Wedekind had sold his mine to John Sparks for \$175,000. However, the actual sale deed shows that the sale was consummated one month later on June 27, 1901. The deed gave Sparks the Reno Star and portions of the Eagle, Safeguard, and Precaution lying east of the Reno Belle (the Reno Belle had been previously given to his children). Also conveyed was a piece of land in the northwest corner of Section 33.

- (4) On March 11, 1902 Wedekind sold that portion of the SE $\frac{1}{4}$, Sec. 29 that covered the Wisconsin, Lilly, Queen and Calamity claims to H. D. Ramsay. Ramsay is believed to have been a son-in-law--husband of his daughter Lillian Helena Ramsay. Ramsay and Mathew Kyle were the original locators of these claims in 1900.
- (5) On January 1, 1903 George H. Wedekind was a co-locator of the Uncle Sam Mine situated in the SE $\frac{1}{4}$, Sec. 29. The claim is described as being a relocation of the 4th of July and Daisy Queen claims.

How did others in the vicinity view the purchase? Presumably others active in the area were in contact with Wedekind. Did they regard his title as good? The following information is available:

- (1) Miners and prospectors continuously located claims on this land.
- (2) John Sparks purchased the Reno Belle and Reno Belle Extension from Wedekind's children. The purchase from three of the children was made in July and August 1901. The sale from the fourth child and also a deed from George Wedekind were completed in 1903.
- (3) John Sparks and J. M. Page bought a $\frac{2}{3}$ interest in the Wisconsin, Lilly, Queen and Calamity claims from Ramsay and Kyle. The deed also specified a $\frac{2}{3}$ interest in that portion of the SE $\frac{1}{4}$, Sec. 29 that covers those claims.
- (4) George J. Smith had a survey made of the Metallic claim made on November 6, 1902. The survey (M.S. 2067) was approved on January 27, 1903.
- (5) Owners of claims on the land, including those claims originally located by Wedekind, continued to record annual assessment work on them.

For what purpose did George H. Wedekind purchase the SE $\frac{1}{4}$, Sec. 29? The answer is uncertain, but several possibilities exist.

One possibility is that he wished to consolidate his mine holdings either in preparation for selling the property or because the Bell suit caused him concern as to his title. He had previously purchased the private land in Sec. 33 that cornered on Sec. 29 and contained many of the mine improvements. Less than a month after the Bell suit started, he purchased the subject land from the railroad. Although the remainder of his workings were on Sec. 28, he could not purchase them because it was not a railroad section.

Another possibility is that he desired the land for real estate purposes. The affidavits of his grandchildren support this. The mineral survey plat of the Safeguard claim (M.S. 1949) shows a number of buildings on the portion of the claim situated in Sec. 29. Four houses and an assay office are shown. With the mine swinging into substantial production, it would be reasonable to expect a town to grow around it as had happened all over the West.

A third possibility is that he believed the lands had mineral potential that he could acquire much more cheaply by purchase for \$1.25 per acre from the railroad versus \$5.00 per acre for patenting mining claims. Then, too, he could avoid the problem of conflicting mining claims.

The factual data indicate that George H. Wedekind had notice that his title was defective. His good faith is questionable. I, therefore, conclude that he was not an "innocent purchaser for value."

Conclusions and Recommendations

It is concluded that:

- (1) The SE $\frac{1}{4}$, Sec. 29, T. 20 N., R. 20 E. was mineral in character prior to and as of February 18, 1901 when George H. Wedekind purchased them from the Central Pacific Railroad Co.
- (2) George H. Wedekind was not an "innocent purchaser for value" when he acquired these lands.

Therefore, it is recommended that a decision be issued to the Southern Pacific Company advising them that our investigation revealed that:

- (1) The SE $\frac{1}{4}$, Sec. 29, T. 20 N., R. 20 E., MDM, Nevada, was known to be mineral in character on February 18, 1901, the date of sale by Central Pacific Railroad Company to George H. Wedekind.
- (2) George H. Wedekind was not an innocent purchaser for value within the meaning of subsection (b), Section 321, Part II, Title III of the Transportation Act of 1940 (54 Stat. 954).

Further, the decision should direct a hearing to be held for the purpose of receiving evidence on these charges.

Robert A. Webb

Exhibit A

SOUTHERN PACIFIC COMPANY
LOUIS G. WEDEKIND

IBLA 70-90

Decided OCT 7 1970

Railroad Grant Lands

Where an application is filed under Section 321(b) of the Transportation Act of 1940 alleging a conveyance to an innocent purchaser for value by a railroad grantee, the application may not be rejected on its face solely for the reason that the lands applied for have been classified as mineral in character subsequent to the time of the conveyance. It must also be shown that the lands were of known mineral character at any time between the date the railroad line was definitely located and the date of the original sale by the railroad and that the purchaser knew or should have known at the time of his purchase that the lands were of this character.

Res Judicata

The doctrine of res judicata has long been accepted and applied by the Department. However, the doctrine is generally invoked as a bar to a claim for relief only where there has been a final adjudication of a matter before the Department and where it is clear that the same facts and issues are involved in a subsequent matter before the Department.

IN REPLY REFER TO:

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
WASHINGTON, D.C. 20240
BOARD OF LAND APPEALS

IBLA 70-90	:	Nevada 058575
SOUTHERN PACIFIC COMPANY	:	Railroad Land Grant
	:	Patent application
LOUIS G. WEDEKIND	:	Set aside and remanded

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Louis G. Wedekind has appealed to the Secretary of the Interior from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated September 10, 1969, which dismissed his appeal from a decision of the Nevada Land Office holding for rejection the application of the Southern Pacific Company for patent to the SE 1/4 of Section 29, T. 20 N., R. 20 E., M.D.M., Washoe County, Nevada.^{1/}

This appeal concerns the disposition of a 160-acre tract of public land for which the Southern Pacific Railroad has applied as part of an odd-numbered section within the limits of the grant to its predecessor, the Central Pacific Railroad Company of California, by the Act of July 1, 1862 (12 Stat. 489), and the Act of July 2, 1864 (13 Stat. 356). The Southern Pacific Railroad filed its application, Nevada 058575, on July 1, 1962, on behalf of the real parties in interest, the heirs of George H. Wedekind, pursuant to Section 321(b) Part II, Title III, of the Transportation Act of 1940, 49 U.S.C. sec. 65 (b) (1964).^{2/}

^{1/} This appeal is being prosecuted by Louis J. Wedekind, one of the heirs of George H. Wedekind, deceased, and is prosecuted on behalf of all of his heirs.

^{2/} Application by the railroad in behalf of its assignee is in accordance with established practice (see Southern Pacific Land Co., 42 L.D. 522 (1913); Santa Fe Pacific Railroad Company, 58 I.D. 591 (1944)).

Under section 3 of the Act of July 1, 1862, supra, the Central Pacific Railroad Company of California was granted every alternate section of public land, designated by odd numbers, up to five alternate sections per mile on each side of the railroad line, and within ten miles of each side of the line, if the land was not sold, reserved or otherwise disposed of at the time the line of the road was definitely fixed, and provided " . . . that all mineral lands shall be excepted from the operation of this act." Section 4 of the Act of July 2, 1864, supra, doubled the grant from five to ten sections per mile on each side of said line, and provided, among other things, that the term "mineral land" wherever used therein, or in the original act, should not be construed to include coal or iron land, and that no land granted by that or the original act should include any other mineral land.

The record shows that Central Pacific Railway Company selected the lands at issue, Section 29, T. 20 N., R. 20 E., M.D.M., Selection List No. 9 for lands in Nevada on June 28, 1895. However, before Central Pacific had received a patent for these lands, it issued a quit-claim deed to George H. Wedekind for the sum of \$800.00 on February 18, 1901, transferring its interest in the SE 1/4 of Section 29. The Central Pacific's selection of Section 29 was subsequently denied by the Department in 1916, pursuant to hearings completed in January 1912, Central Pacific Railway Co., 45 L.D. 25 (1916), rehearing denied, 45 L.D. 27 (1916), affirmed, Central Pacific Railway Co. v. Lane, 46 App. D. C. 372 (D.C. Cir. 1917). The basis for the denial was that all the lands in the section were mineral in character and, therefore, excluded under the terms of the Act of July 1, 1862 (Section 3), and the Act of July 2, 1864 (Section 4).

The appellant filed its present application under the Transportation Act of 1940, supra, asserting that patent to the SE 1/4 of Section 29 should issue to the Southern Pacific Railroad on behalf of the heirs of George H. Wedekind based on the quit-claim conveyance to Wedekind as an innocent purchaser for value from the railroad in 1901.^{3/}

^{3/} In support of this contention, appellant has submitted a copy of Central Pacific Railway Company Deed No. 8892, dated February 18, 1901, conveying the described land to George H. Wedekind.

Section 321(b) of the Transportation Act provides that if any land grant railroad wishes to take advantage of charging higher rates for carrying Government traffic, it must file a release of any claim it might have against the United States to lands granted to the railroad. It is provided, however, that nothing in Section 321(b) should be construed

. . . to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value

The Southern Pacific Company and its predecessor, the Central Pacific, filed such releases, specifically excepting lands sold to innocent purchasers for value.

By a decision of January 30, 1969, the Nevada Land Office rejected the application under the Transportation Act because the lands applied for had been determined to be mineral in character by the Department in 1916 and by the courts, citing U. S. v. Central Pacific Railway Co., D-31706-B, List No. 9, Serial 01223, affirmed by the Supreme Court of the District of Columbia (Equity No. 34359) and the Court of Appeals of the District of Columbia in Central Pacific Railway Co. v. Lane, No. 3008, 46 App. Cases 372 (1917). It held that the lands in Section 29 were not subject to the original railroad grant, and in accordance with the regulations under the Transportation Act (43 CFR 2224.3-a, 1970 Rev.),^{4/} rejected the application.

The Office of Appeals and Hearings dismissed the appeal from the Land Office decision on the ground that the doctrine of res judicata or its administrative law counterpart, the doctrine of finality of administrative action, applied to this case, preventing further consideration of an appeal by the Southern Pacific Company. The decision states:

In the present application, the Southern Pacific Company has presented the same issue as that decided in the case cited above [Central Pacific Railway v. Lane, supra]. It is therefore determined to be res judicata and a bar to any further claim for relief, and it is not proper again to consider on its merits an appeal on the same issue and for the same land.

^{4/} Now 43 CFR 2631.0-8, 35 F. R. 9613 (1970).

Before a decision can be reached in this case, a determination must be made as to the character of the land from the date the railroad line was definitely located to the date of purchase and whether the purchaser from the railroad was an "innocent purchaser" for value. This has not been done. After a thorough review of the record before us we cannot say with certainty whether or not the departmental decision of 1916 and court decisions of 1917 specifically found that Section 29 lands were mineral in character as of February 18, 1901, the date of purchase from the railroad, or prior thereto. It is elementary that res judicata cannot bar a claim unless the same issues and facts are involved in the subsequent proceeding. Therefore, the doctrine of res judicata does not apply in the instant case and the ruling below was in error.

Prior decisions of the Department provide that a patent may be issued under section 321(b), supra, for railroad grant lands sold by the railroad if the land was nonmineral in character at the time of sale and the purchaser was an innocent purchaser for value, even though the land is subsequently determined to be mineral in character. Southern Pacific Company, 71 I.D. 224 (1964). The bona fides requirement where the land is nonmineral in character at the time of the purchase pertains to the absence of knowledge of its mineral character, if such were the case, between the time the railroad line was definitely located and the date of purchase, for its characterization as such during that period would except it from the grant to the railroad. U. S. v. Southern Pacific Company, 77 I.D. 41 (1970). Even if it is found that the land was mineral in character at or prior to the time of sale, a patent will issue if it is determined that the purchaser was not chargeable with actual or constructive notice of that fact. Ibid.

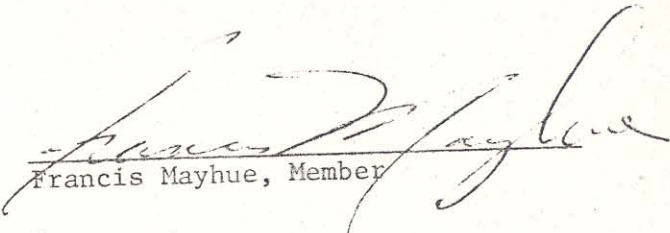
The concept of a bona fide purchaser or innocent purchaser for value has been analyzed by the Supreme Court under the Act of March 3, 1887, 43 U.S.C. §§ 894-899 (1964), in the cases of United States v. Winona & St. Peter RR, 165 U.S. 463 (1897) and Winona & St. Peter RR v. United States 165 U.S. 483 (1897). The same concepts apply under the Transportation Act of 1940 in the instant case. Generally, for a purchaser not to be bona fide the facts must show that he knew or should have known that the lands were mineral in character as of the date of his

purchase or were of such character so as to have been excluded when the railroad line was definitely located or at any time prior to this purchase. United States v. Southern Pacific Company, supra. As was said in United States v. Central Pacific Railway Co., 84 Fed. 218, 221 (Cir. Ct., N.D. Cal. 1898):

. . . . The status of a bona fide purchaser is made up of three essential elements: (1) a valuable consideration, (2) absence of notice; and (3) the presence of good faith.

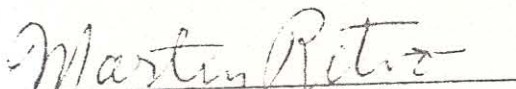
For the reasons set forth herein, the Bureau's decision is set aside and the case is remanded for the purpose of a hearing. At the hearing, competent evidence should be adduced as to the character of the lands from the time the railroad line was definitely located to and including the time of the purchase from the railroad. In the event it is determined that the land was mineral in character at any time during such period, evidence should be received relating to the bona fides of the purchaser.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), this case is remanded for further consideration and action consistent with this decision.


Francis Mayhue, Member

I concur:

I concur:


Martin Ritvo, Member

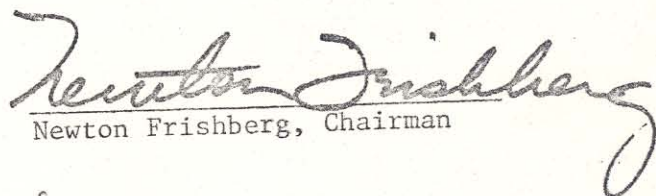

Newton Frishberg, Chairman

Exhibit B

Southern Pacific Transportation Company

Exhibit B

One Market Street • San Francisco, California 94105

H. M. WILLIAMSON
CHIEF ENGINEER-SYSTEM
J. A. HOLMES
ASSISTANT CHIEF ENGINEER
G. J. LYON
ASSISTANT TO CHIEF ENGINEER
T. H. KRUTTSCHNITT, JR.
ASSISTANT TO CHIEF ENGINEER
C. E. NEAL
ASSISTANT TO CHIEF ENGINEER

For U S Government Use Only

February 24, 1972

1972 FEB 28 AM 10:00

MAINTENANCE OF WA
AND STRUCTURES-SYSTEM
H. F. DULLY
DISTRICT ENGINEER
R. E. FRAME
DISTRICT ENGINEER

IN REPLY PLEASE REFER

922/311

Mr. Robert T. Webb
Supervisory Mining Engineer
United States Department of the Interior
Bureau of Land Management
Nevada State Office
300 Booth Street
Federal Building, Room 3008
Reno, Nevada 89502

Dear Mr. Webb:

This is in reference to your letter of February 14 regarding "definitely located" railroad line in the vicinity of the Reno area, your file 3000 Nevada 058575 (N-930.6).

We have reviewed our records and from Statement Showing Land Grants Made by Congress, dated February 18, 1915, on page 11, it indicates that the line of railroad acquired by the Central Pacific Railroad Company between Salt Lake and the eastern boundary of California was definitely located on April 23, 1865.

Trust this is the information you request and hope it will be of some help to you.

Very truly yours,

H. M. Williamson
jwb

Exhibit C

For U.S. Government Use Only

Sec. 29

Sec. 28

Subject Land
SE¹/₄ SE¹/₄
Sec. 29
T20N R20E

State
Selection
1-7-84

RENO
STAR

Bell Property

R.R. Patent
12-5-1876

Sec. 32

Sec. 33

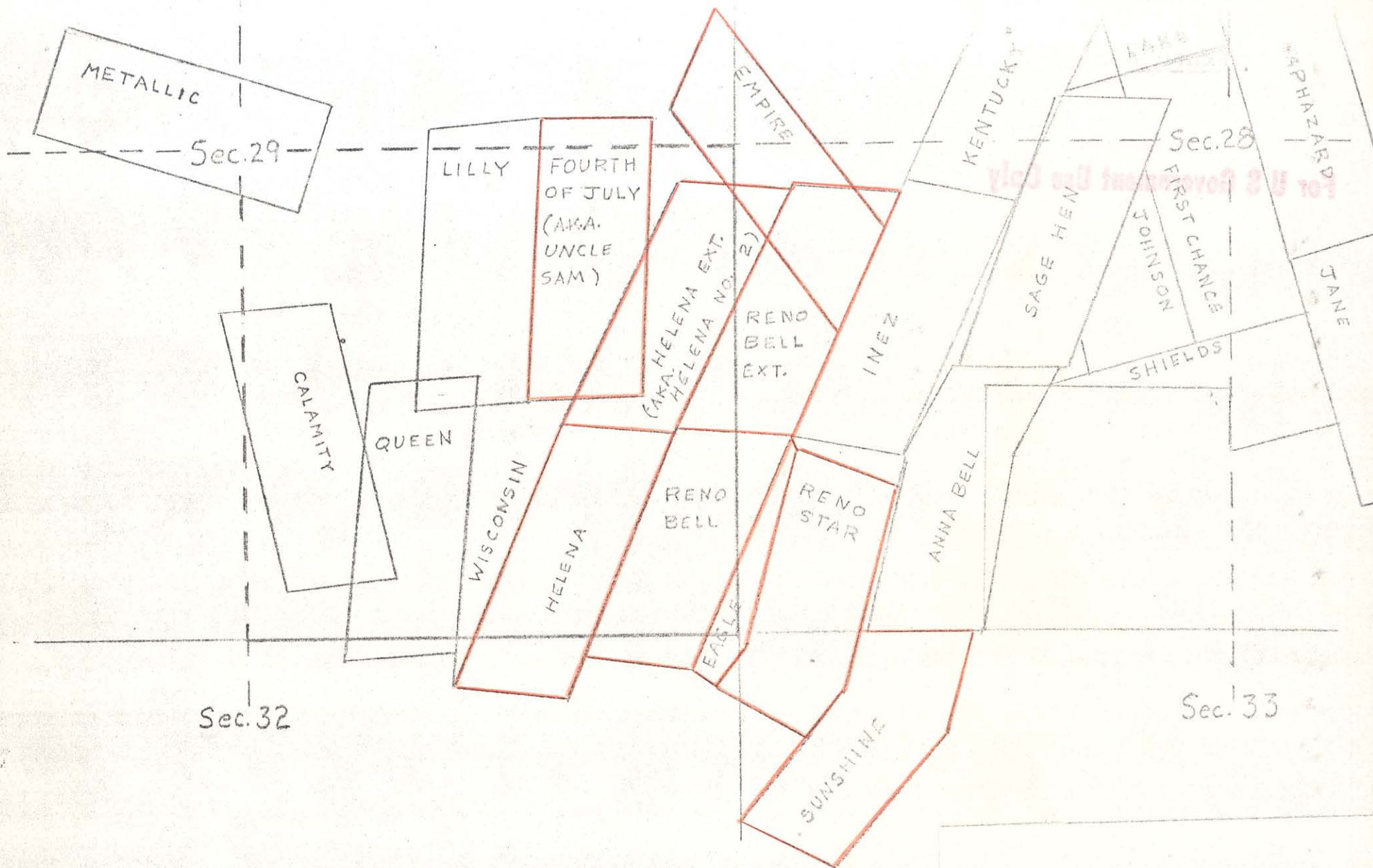
Cash Entry
2-11-1890

SCALE 0 500 1000 FT.



EXHIBIT C
Sketch map showing
land status in 1897,
in the vicinity of
SE¹/₄ SE¹/₄ Sec 29, T.20N R.20E

Exhibit D



CLAIMS LOCATED BY
GEORGE H. WEDEKIND & FAMILY


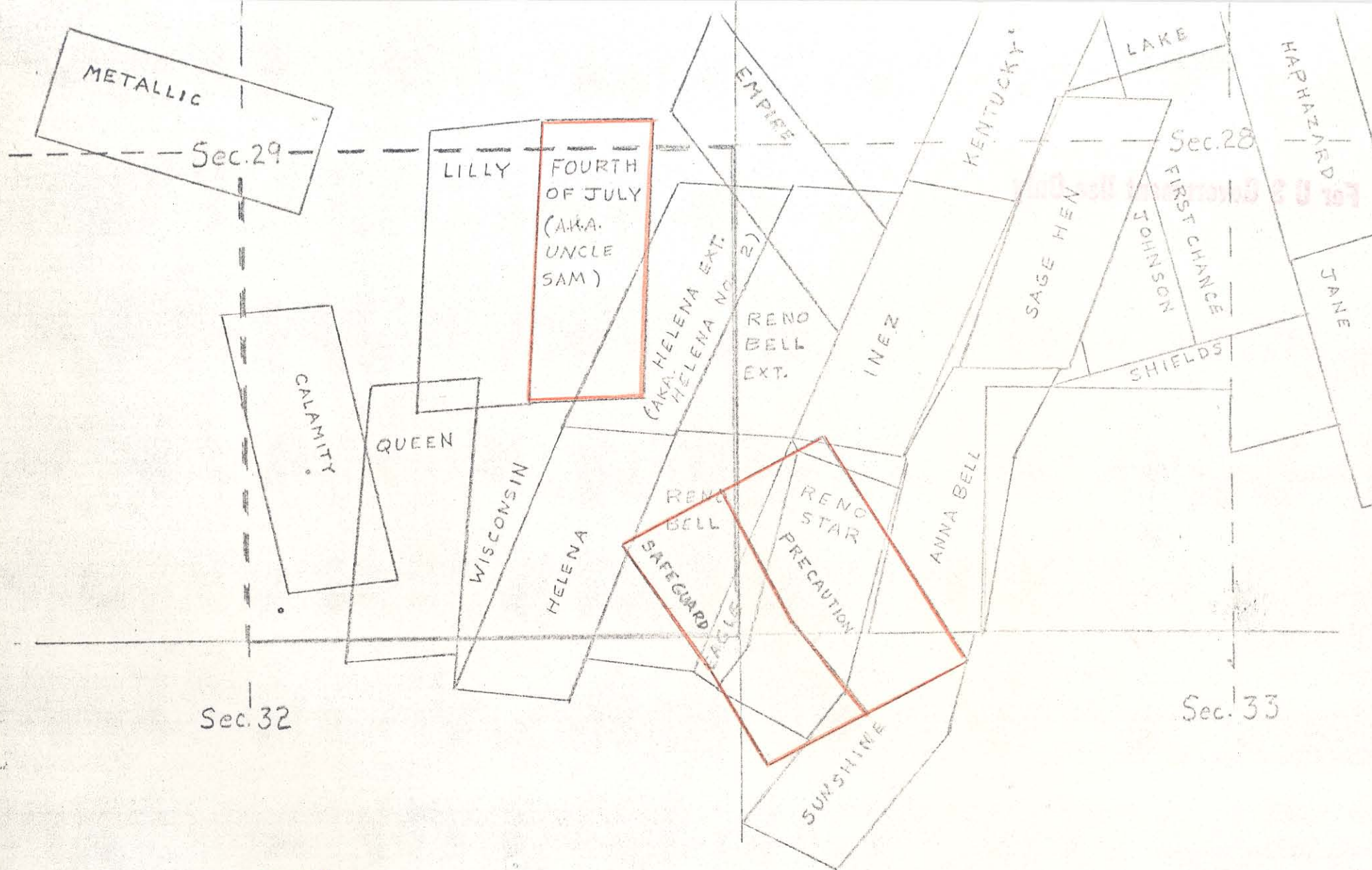
SCALE:  0 500 1000 FT.

EXHIBIT D
Sketch Map showing
some of the mining claims
located prior to February 18, 1901,
in the vicinity of
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, T 20N R 20E

RW 2-1-73

Exhibit E



CLAIMS LOCATED BY
GEORGE H. WEDEKIND AFTER
FEBRUARY 18, 1901

SCALE:  1000 FT.

EXHIBIT E

Sketch Map showing Mining
Claims located by George H.
Wedekind after February 18, 1901,
on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 T 20N R 20E

RW 2-1-73

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Outline Summary of the History of SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 29, T. 20 N., R. 20 E.

4-23-1865	Railroad line was definitely located.
6-30-1872	Original survey - no indication of minerals on plat.
12-5-1876	Railroad issued patent to Sec. 33.
2-11-1890	Cash entry patent issued for NE $\frac{1}{4}$, Sec. 32.
6-28-1895	Railroad filed selection List No. 9 (included Sec. 29).
8-21-1897	Wedekind located the <u>Reno Star</u> .
1900	Wedekind and relatives located 8 more claims. A flurry of claim staking by others took place.
8-27-1900	Wedekind gave the <u>Reno Bell</u> and <u>Reno Bell Ext.</u> to his children.
12-7-1900	Wedekind purchased land in NW corner of Sec. 33.
1-17-1901	Bell v. Wedekind filed. Sought and received an injunction to keep Wedekind off of Bell's property in Sec. 32 (Case No. 4394).
2-8-1901	Wedekind paid the Railroad for SE $\frac{1}{4}$, Sec. 29.
2-18-1901	Railroad issued deed to SE $\frac{1}{4}$, Sec. 29 to Wedekind.
4-10 & 13-1901	Wedekind located the <u>Safeguard</u> and <u>Precaution</u> .
5-15-1901	Wedekind v. Bell filed seeking extralateral rights under Bell's property (Case No. 4427).
6-27-1901	Wedekind sold Sparks the <u>Reno Star</u> and parts of the <u>Eagle</u> , <u>Safeguard</u> , and <u>Precaution</u> lying east of the Reno Bell and his land in Sec. 33.
7-25-1901	Ruling on Wedekind v. Bell in favor of Wedekind.
7-10-1902	Nev. Supreme Court ruling in Wedekind v. Bell considered issues moot (Case No. 1,619).
1-1-1903	Wedekind et. al. located the <u>Uncle Sam Mine</u> .

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10-21-1905	Wedekind died at the age of 77.
Dec. 1905 - Mar. 1906	Resurvey field work done for plat dated 2-19-1907 noted "...mineral indications in Secs. 20, 21, 28 & 29."
3-24-1911	Charges issued by GLO that Sec. 29 is mineral in character.
1-9-1912	Hearing held.
1-29-1915	Decision by Registrar and Receiver declaring land mineral in character.
12-15-1915	Decision by Commissioner GLO declaring land mineral in character.
4-7-1916	Secretary's decision (45 LD 25) declaring land mineral in character.
5-16-1916	Secretary denied motion for rehearing (45 LD 27).
?	Supreme Court, District of Columbia, affirmed Secretary's decision.
4-23-1917	Court of Appeals affirmed the District Court decision (46 App. D.C. 372).