



COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY
MINERALS PROGRAM INSPECTION REPORT
PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

MINE NAME: Toltec No 2	MINE/PROSPECTING ID#: M-1984-039	MINERAL: Silver, gold, copper,	COUNTY: San Juan
INSPECTION TYPE: Monitoring	INSPECTOR(S): Wallace H. Erickson	INSP. DATE: September 25, 2012	INSP. TIME: 09:30
OPERATOR: Wilbur F Benham	OPERATOR REPRESENTATIVE: Jim Lokey	TYPE OF OPERATION: 110(2) - Hard Rock Limited Impact	

REASON FOR INSPECTION: Other Agency Request	BOND CALCULATION TYPE: Partial Bond	BOND AMOUNT: \$2,500.00
DATE OF COMPLAINT: NA	POST INSP. CONTACTS: MSHA, ATF	JOINT INSP. AGENCY: None
WEATHER: Snowing	INSPECTOR'S SIGNATURE: <i>Wallace H. Erickson</i>	SIGNATURE DATE: October 12, 2012

GENERAL INSPECTION TOPICS

This list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each. No problems or possible violations were noted during the inspection. The mine operation was found to be in full compliance with Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and/or for Hard Rock, Metal and Designated Mining Operations. Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; or any environmental protection facility designed to contain or control chemicals or waste which are acid or toxic-forming, as identified in the permit.

(AR) RECORDS----- <u>N</u>	(FN) FINANCIAL WARRANTY----- <u>N</u>	(RD) ROADS----- <u>Y</u>
(HB) HYDROLOGIC BALANCE----- <u>Y</u>	(BG) BACKFILL & GRADING----- <u>Y</u>	(EX) EXPLOSIVES----- <u>Y</u>
(PW) PROCESSING WASTE/TAILING---- <u>N</u>	(SF) PROCESSING FACILITIES----- <u>NA</u>	(TS) TOPSOIL----- <u>N</u>
(MP) GENL MINE PLAN COMPLIANCE- <u>N</u>	(FW) FISH & WILDLIFE----- <u>Y</u>	(RV) REVEGETATION---- <u>N</u>
(SM) SIGNS AND MARKERS----- <u>N</u>	(SP) STORM WATER MGT PLAN---- <u>N</u>	(SB) COMPLETE INSP---- <u>N</u>
(ES) OVERBURDEN/DEV. WASTE----- <u>Y</u>	(SC) EROSION/SEDIMENTATION-- <u>Y</u>	(RS) RECL PLAN/COMP-- <u>N</u>
(AT) ACID OR TOXIC MATERIALS----- <u>Y</u>	(OD) OFF-SITE DAMAGE----- <u>N</u>	(ST) STIPULATIONS----- <u>NA</u>

Y = Inspected and found in compliance / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

OBSERVATIONS

This inspection occurred as part of the Colorado Division of Reclamation, Mining and Safety (DRMS) monitoring program of permitted operations and in response to a referral from Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), addressed to Mine Safety and Health Administration (MSHA), which MSHA had forwarded to DRMS on September 18, 2012. The Toltec No. 2 permit is approved for 8 acres affected lands for the extraction of precious metals ore from the Toltec, Toltec 1, Toltec 2 and Toltec 3 mine claims. The claims are located approximately 9 miles northeast of Silverton, along a northeast ridgeline of Eureka Mountain. The ridgeline defines portions of the southern watershed boundary of Picayne Gulch. The claim blocks commence with the Toltec, located at approximately 12,400 feet elevation, and trend northeast for approximately 1.25 miles to the north point of the Toltec 3, located at approximately 11,200 feet elevation. This report is accompanied by copy of the referral from ATF and 8 photos.

On September 20, 2012, the Division contacted Wilber Benham, (785) 874-8080, to schedule the inspection. Mr. Benham declined to participate for health/medical reasons and encouraged DRMS to contact his local representative, Jim Lokey at (970) 387-5512. Mr. Lokey was contacted at the Red Mountain Motel, Cabins, RV Park, and Jeep Rentals, in Silverton. Mr. Lokey accompanied DRMS throughout the inspection.

According to Mr. Lokey, ATF had recently inspected the site. The explosives magazines of interest to ATF were located in the Toltec Tunnel, a historic mine located on the Hobo claim, owned or controlled by the proprietor of K & C Traders, also located in Silverton. Mr. Lokey indicated the explosives magazines were empty, had been for years, and were locked. Mr. Lokey indicated he did not have keys for the magazines and suggested the proprietor of K & C Traders might. Mr. Benham had not previously identified the proprietor of K & C Traders as his local representative and DRMS did not attempt to contact K & C Traders during the inspection. The Toltec Tunnel was located immediately west County Road 2, nearby the confluence of Picayne Gulch with the Animas River, approximately 0.3 miles northeast of the DRMS permit area, and at approximately 10,640 feet elevation. The Toltec Tunnel is a pre-law mine, abandoned prior to the Colorado Mined Land Reclamation Act, and not addressed by the DRMS permit for the Toltec No. 2, M-1984-039.

As shown in photo 1, vehicular access to the Toltec Tunnel was controlled by pipe and cable barrier across the entrance road. The cable was locked. As shown in photo 5, the portal was open and not safeguarded against unauthorized entry. Mr. Lokey indicated a security closure was being fabricated and should be available soon for installation. Mine drainage was trickling from the portal; flow was visually estimated at several gallons per minute, which appeared to seep into the bench surface at the portal. Inside the portal mine drainage was several inches deep. An explosives magazine was located approximately 10 feet inside the portal. The magazine was set on a wooden pallet and was not in direct contact with mine drainage. The magazine was locked and Mr. Lokey did not have a key; contents could not be verified by DRMS. A second magazine was located approximately 30 feet in from the portal, at a T-intersection of the underground workings, see photo 7. The second magazine was set on mine timbers and was not in direct contact with mine drainage. The second magazine was locked and Mr. Lokey did not have a key; contents could not be verified by DRMS. Evidence of recent mining activity was not observed; the site appeared to have been dormant for decades, with the exception of placement and/or movement of the magazines.

The day after the inspection, on September 26, 2012, DRMS contacted Keith McFarland at (970) 387-5123. Mr. McFarland verified he and his wife, Connie, were the proprietors of K & C Traders and he controlled the mineral rights for the Hobo claim. Mr. McFarland indicated he had keys for the magazines located within the Toltec Tunnel, he was licensed for explosives, and the magazines contained no explosives. Mr. McFarland also provided the number for his cell phone (970) 759-5992 for future contacts. Subsequently, DRMS contacted Mr. Benham at (785) 874-8080, and inquired about the location of the keys for the magazines. DRMS inquired specifically whether the keys were held by the proprietor of K & C Traders, Keith McFarland. Mr. Benham indicated he did not know Keith McFarland and thought his keys were with Jim Lokey.

Inspection Topics Not Related to the ATF Referral

Due to an accelerating rate of snowfall occurring during the inspection, DRMS and Mr. Lokey did not attempt to gain higher elevation than an exploratory excavation located at the lower end of the Toltec 2 claim, shown in photo 8. Affected lands for the Toltec, Toltec 1 and Toltec 3 claims were not inspected. DRMS will schedule a follow-up inspection for July 2013, after snow melt, when all affected lands can be inspected and compliance with permit conditions and the Act and Rules can be more fully determined. At that time DRMS will also review the current cost of reclamation and will require additional financial warranty, if necessary, to ensure successful completion of reclamation. The Operator is encouraged to ensure a mine identification sign is posted for M-1984-039, and all boundary markers are posted for the 8-acres area of the DRMS permit, in accordance with the requirements of Rule 3.1.12. During this September 25, 2012 inspection, DRMS did not observe any mine identification sign or permit boundary markers, but they could have been obscured by inclement weather and/or overlooked due to the hurried nature of the inspection resulting from the accelerating rate of snowfall.

Inspection Contact Address

Wilbur F Benham
1012 Kennedy Dr., Apt. A
Norton, KS 67654

Enclosure: Referral No. 2012-0072 from ATF, addressed to MSHA, and forwarded to DRMS, 2 pages
8 photos taken on September 25, 2012

cc w/enclosure: Rebecca Solis, ATF
Melvin Lapin, MSHA
Jim Lokey, Red Mountain Motel, Cabins, RV Park, and Jeep Rentals
Keith McFarland, K & C Traders

ec w/enclosure: Rebecca Solis, ATF
Melvin Lapin, MSHA
Bill York-Feirn, DRMS Denver
Bruce Stover, DRMS Denver
Tony Waldron, DRMS Denver
Russ Means, DRMS GJFO

Referral of Information

PART I - REFERRAL

1. TO: (Title, agency and address) Richard LAUFENBERG District Manager MSHA Rocky Mountain District P.O. Box 25367, DFC Denver, CO 802250367	REFERRAL NO. (Optional) 2012-0072 2a. DATE 09/12/2012 2b. UI 788020-2012-0438
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The following information and attachment (Check applicable box) ☐ are sent to you as requested, ☒ are referred to you for consideration as potential criminal or civil violations coming under your jurisdiction.

COMPLETE FOR REFERRALS OR REQUESTS OUTSIDE ATF - This Referral (Check applicable box) ☐ DOES ☒ DOES NOT contain confidential returns or return information under 26 U.S.C. 6103.

COMPLETE IF APPLICABLE: This is a confirmation of a referral made (Check applicable box) ☐ by telephone ☐ in person on

3. NAME(S) OF PRINCIPALS INVOLVED IN POSSIBLE VIOLATION

Toltec Mining
Wilbur F. Benham

4. STATUTE(S) POSSIBLY VIOLATED

5. FEDERAL LICENSES AND/OR PERMITS HELD (Type and number)

5-CO-33-00661 user of high explosives

6. ATF OFFICER UNCOVERING POTENTIAL VIOLATION

Wadene DUFFY

7. POST OF DUTY

Denver III Field Office

8. SUMMARY OF SIGNIFICANT FACTS AND/OR EXPLANATION OR DESCRIPTION OF ATTACHMENT (Continue on a separate sheet, if necessary.)

Wilbur F. BENHAM, owner of TOLTEC MINING, County Rd 99, Silverton, CO 81433, has two explosives magazines which are stored underground in the Toltec Tunnel. According to Mr. BENHAM, there are no explosives in the magazines at this time, nor has there been any inventory in several years.

The mine site is located approximately 7.5 miles west of Silverton, CO and is only operated from July through October, weather permitting. There is no restricted access to the tunnel or the magazines.

Referrals to MSHA to inspect the magazines have been sent by ATF in October 2009, March 2007 and August 2006; however, there are no records in the ATF Area Office file verifying that any inspections have been conducted by MSHA.

Wilbur BENHAM resides in Norton, KS, has health issues, and states it is too difficult for him to travel to the mine site in Silverton, CO. BENHAM can be reached at (785) 874-8080. Jimmie LOKEY, a friend of Wilbur BENHAM and a resident in Silverton, CO, has keys and can access the Toltec, Toltec 1, Toltec 2 and Toltec tunnel. LOKEY owns Toltec 3. LOKEY can be reached at (970) 387-5512.

Photos and map information are attached to this referral.

9. ATF OFFICIAL APPROVING REFERRAL (Signature)

Rebecca SOLIS

Digitally signed by Rebecca Solis
DN: cn=Rebecca Solis, o=Denver Field Division,
ou=Denver III, email=Rebecca.Solis@atf.gov, c=US
Date: 2012.09.15 18:10:54 -0600

10. TITLE AND ADDRESS

Area Supervisor
Suite 1800
950 17th Street
Denver, CO 80202

11. TELEPHONE NO.

(303) 575-7648

PART II - RESPONSE (See Instruction 4.)

1. THE REFERRAL ABOVE IS ☐ ACCEPTED ☐ REJECTED (Explain below) ☐ OTHER (Explain below)

2. DATE

3. ACTION PLANNED OR TAKEN AND COMMENTS (Continue on a separate sheet, if necessary.)

4. SIGNATURE

5. TITLE OF OFFICIAL

6. ADDRESS

7. TELEPHONE NO.

COMPLETE FOR REFERRALS WITHIN ATF: THIS RESPONSE IS ☐ INTERIM ☐ FINAL

Toltec No. 2
M-1984-039
September 25, 2012
Photo 1

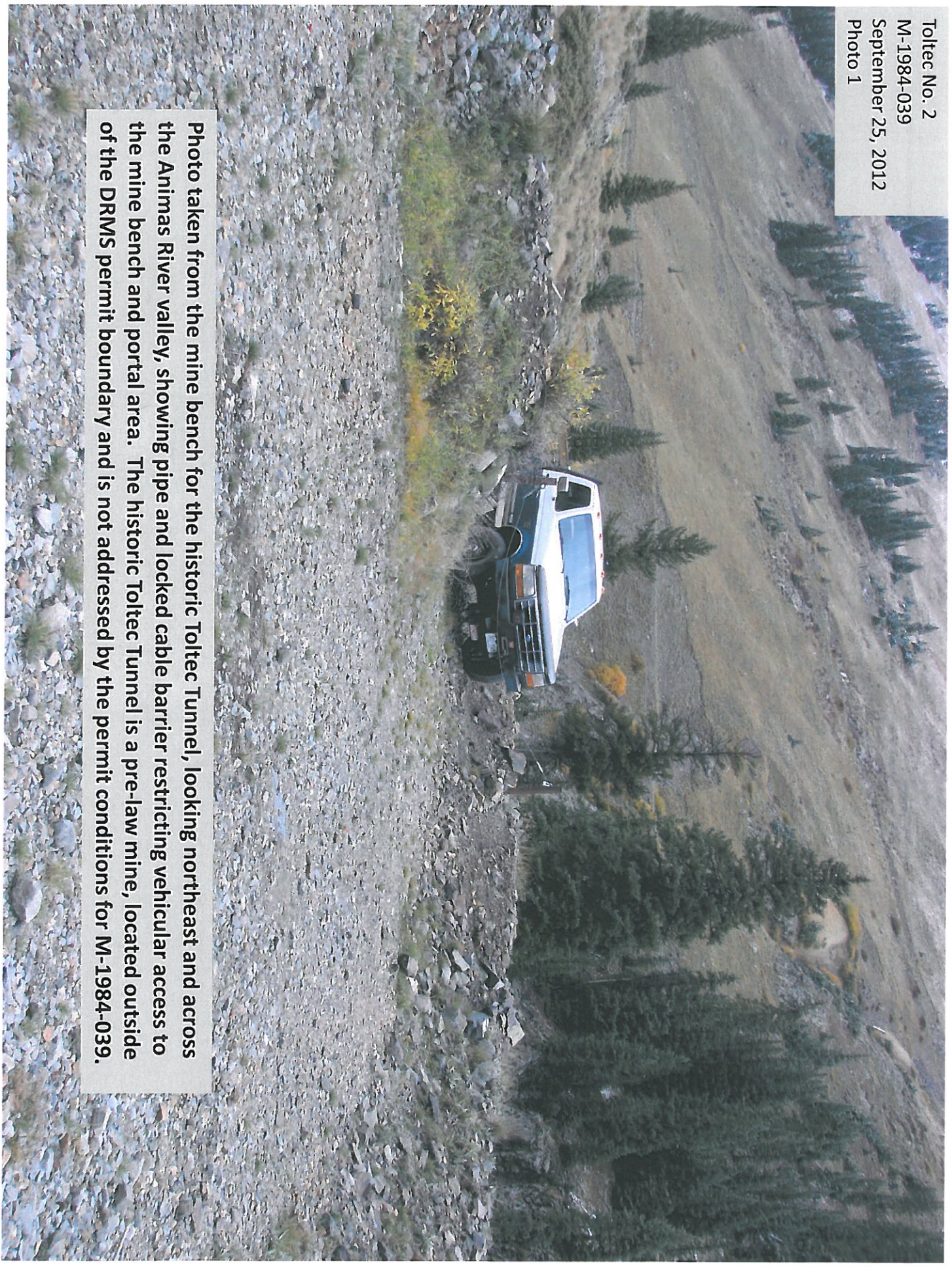


Photo taken from the mine bench for the historic Toltec Tunnel, looking northeast and across the Animas River valley, showing pipe and locked cable barrier restricting vehicular access to the mine bench and portal area. The historic Toltec Tunnel is a pre-law mine, located outside of the DRMS permit boundary and is not addressed by the permit conditions for M-1984-039.

Toltec No. 2
M-1984-039
September 25, 2012
Photo 2



Photo taken from the mine bench of the historic Toltec Tunnel, looking west, showing the portal and nearby subsidence feature associated with underground collapse.

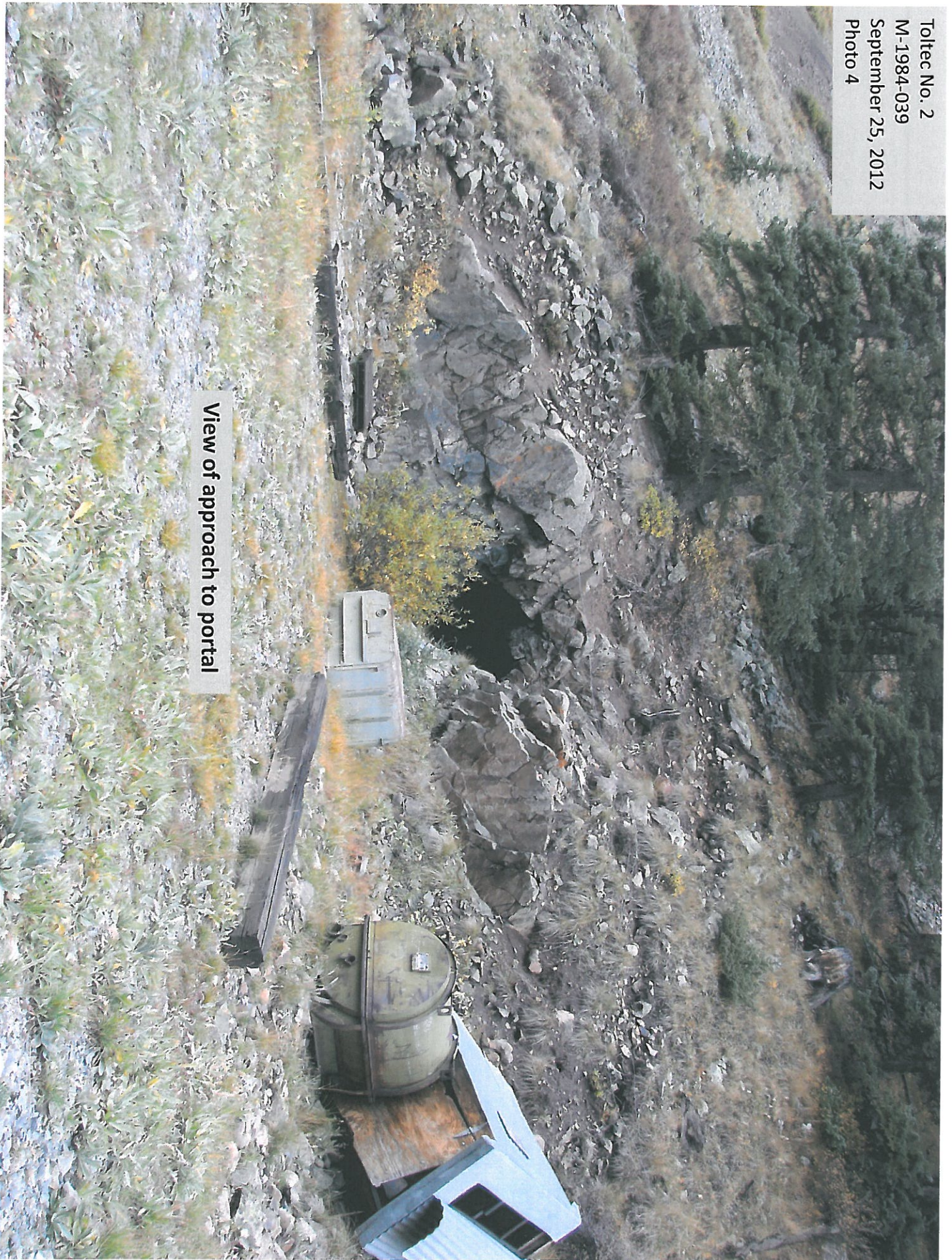
Toltec No. 2
M-1984-039
September 25, 2012
Photo 3



Detail view of subsidence feature

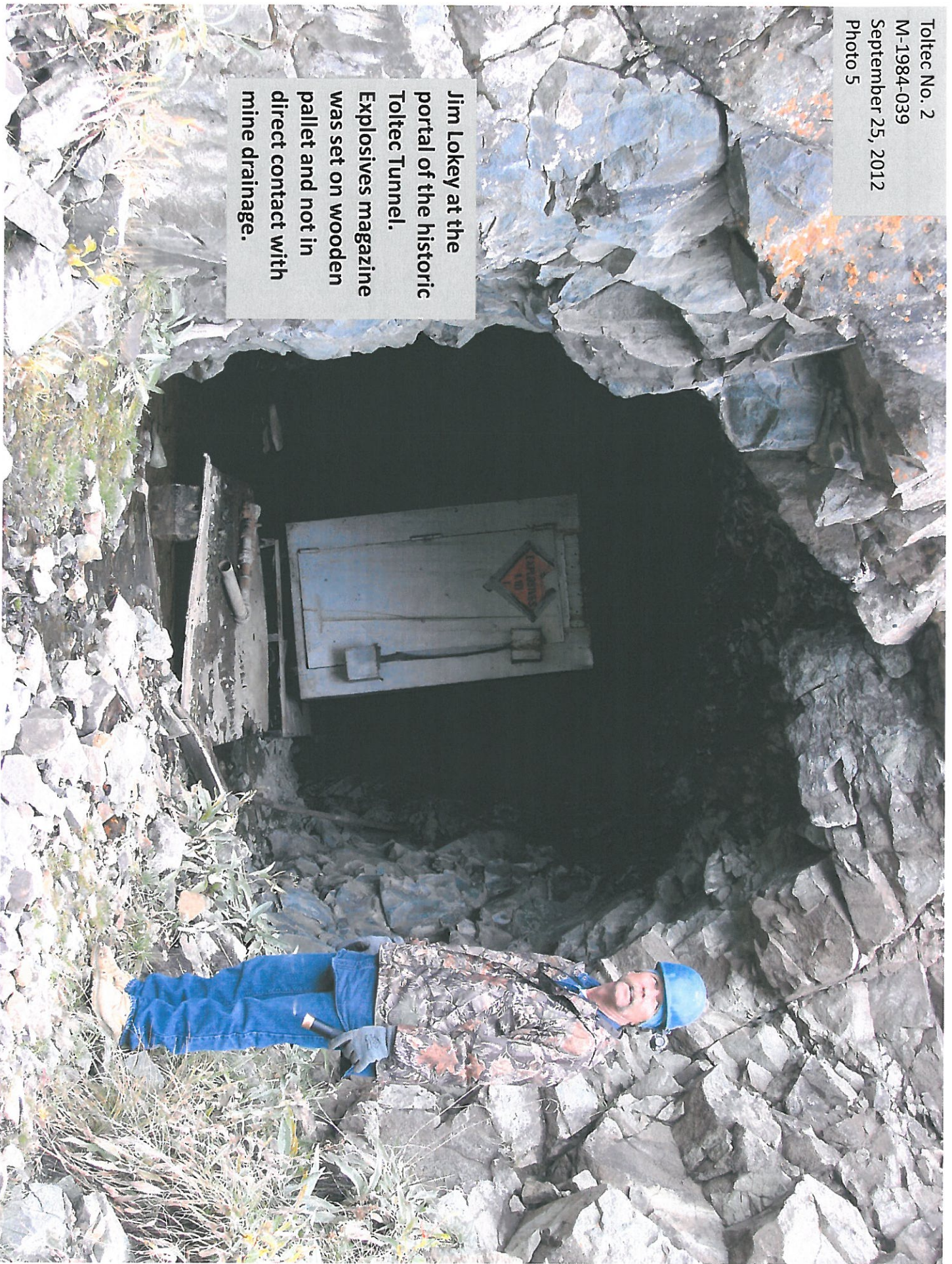
Toltec No. 2
M-1984-039
September 25, 2012
Photo 4

View of approach to portal



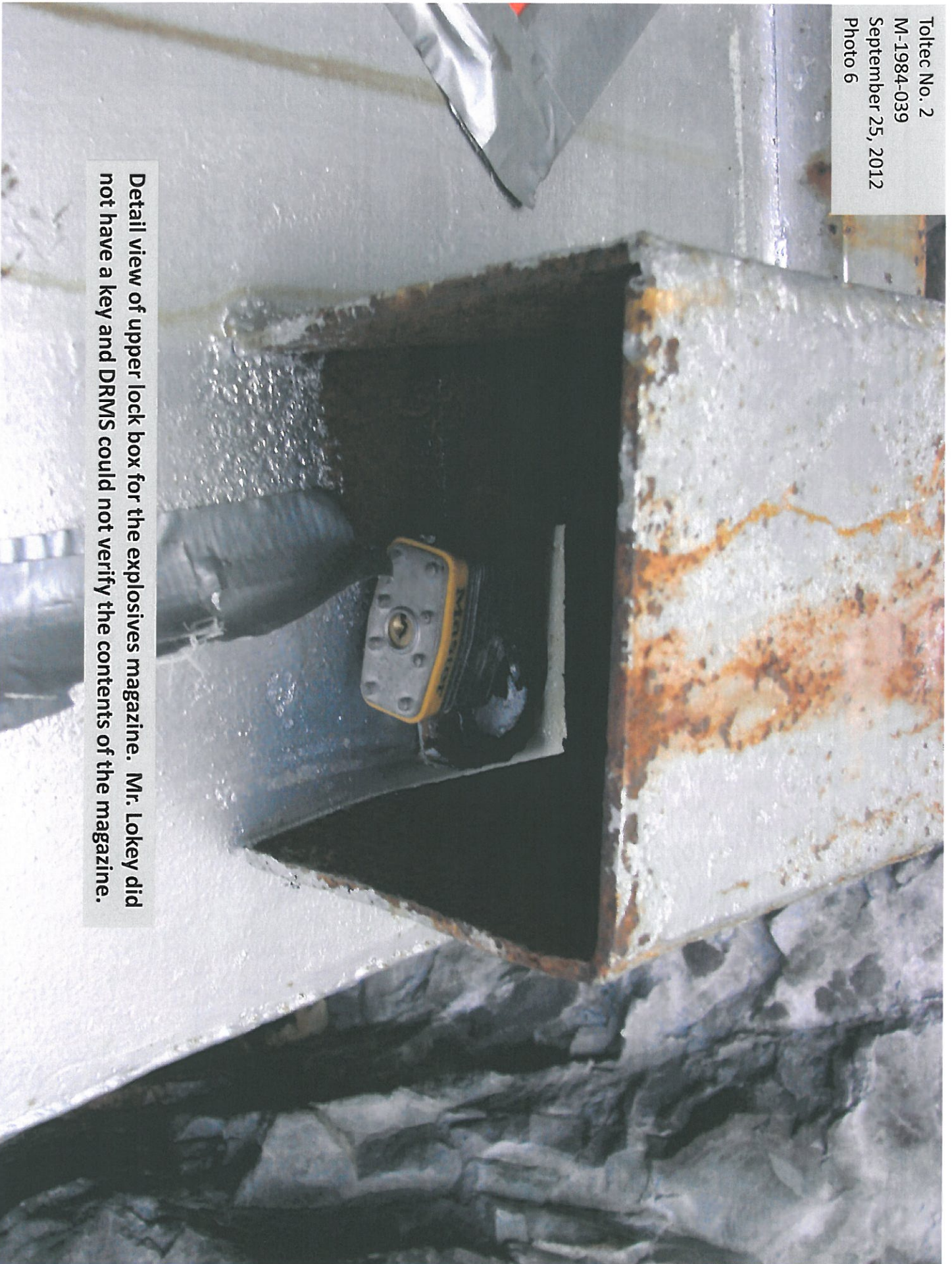
Toltec No. 2
M-1984-039
September 25, 2012
Photo 5

Jim Lokey at the
portal of the historic
Toltec Tunnel.
Explosives magazine
was set on wooden
pallet and not in
direct contact with
mine drainage.



Toltec No. 2
M-1984-039
September 25, 2012
Photo 6

Detail view of upper lock box for the explosives magazine. Mr. Lokey did not have a key and DRMS could not verify the contents of the magazine.

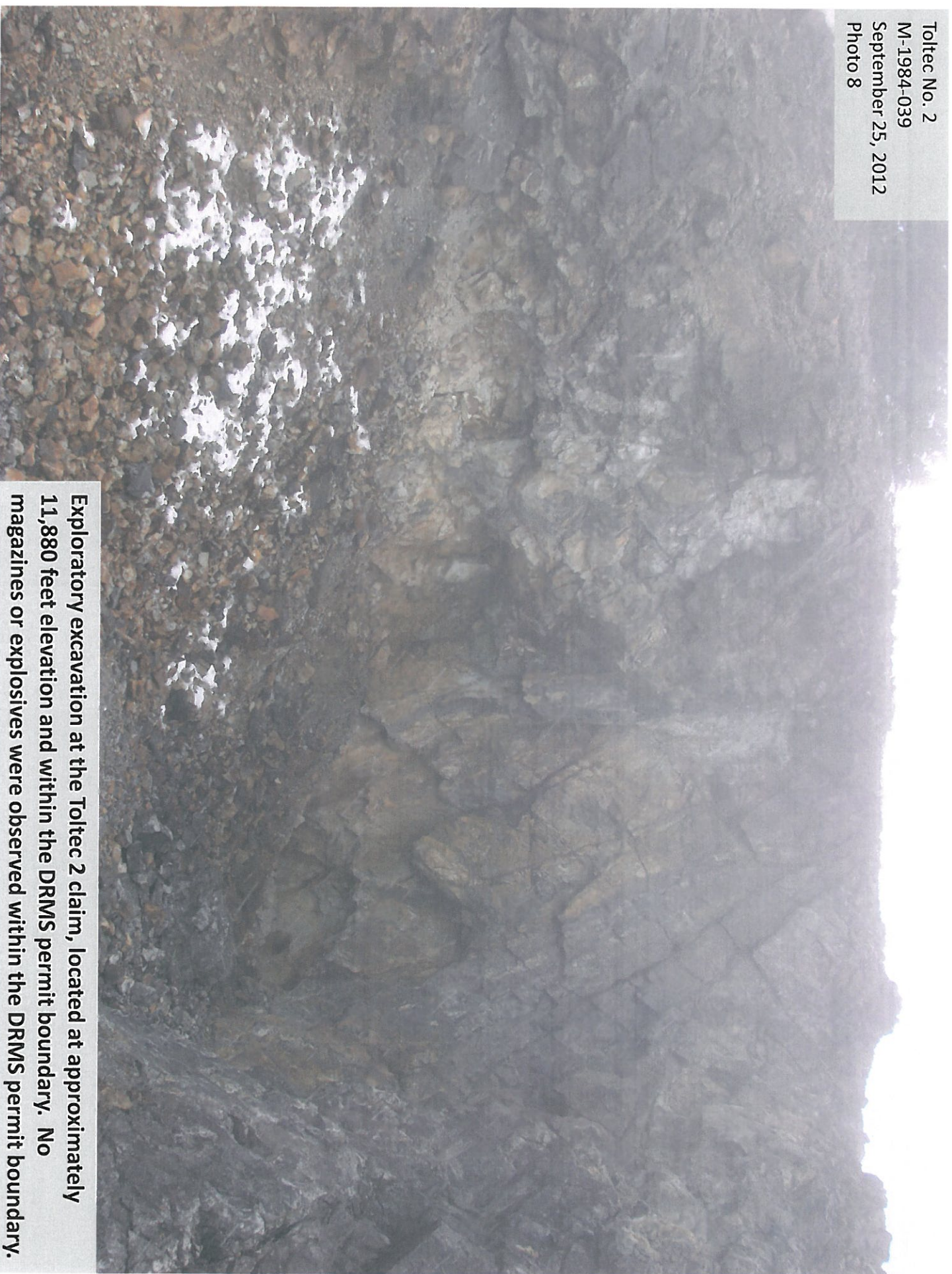


Toltec No. 2
M-1984-039
September 25, 2012
Photo 7

A second magazine was located approximately 30 feet in from the portal, at a T-intersection in the underground workings. The second magazine was set on mine timbers and not in direct contact with mine drainage. The magazine was locked and Mr. Lokey did not have a key; contents not verified.



Toltec No. 2
M-1984-039
September 25, 2012
Photo 8



Exploratory excavation at the Toltec 2 claim, located at approximately 11,880 feet elevation and within the DRMS permit boundary. No magazines or explosives were observed within the DRMS permit boundary.