



## **CONTACT INFORMATION**

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PRINTED: 11/19/2001

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: LITTLE PAN

ALTERNATE NAMES:

MARICOPA COUNTY MILS NUMBER: 23

LOCATION: TOWNSHIP 8 N RANGE 2 E SECTION 29 QUARTER NE  
LATITUDE: N 34DEG 00MIN 43SEC LONGITUDE: W 112DEG 10MIN 30SEC  
TOPO MAP NAME: BLACK CANYON CITY - 7.5 MIN

CURRENT STATUS: EXP PROSPECT

COMMODITY:  
GOLD PLACER

BIBLIOGRAPHY:  
ADMMR LITTLE PAN FILE  
ADDITIONAL CLAIMS SEC 20 SE 1/4-T8N-R2E

AGUA FRIA PLACER

MARICOPA COUNTY

YAVAPAI

AU

See: Arizona Consolidated Development (file)

See: ABM Bull. 160 p. 61  
ABM Bull. 180 p. 161

SEE: Colvo. file

4/21/81 (replacement card)

LITTLE PAN MINE

MARICOPA COUNTY

GW WR 11/16/76: Harvey Ross, President of Little Pan Mining Corporation brought a copy of a lease they have with Mr. Finnell stating he wanted advice as to whether or not it was void because he (Finnell) had done no work in 90 days as stipulated. He was directed to a lawyer.

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4/26/78: Results as shown by attached assays show a range from traces up to 1.96 ounces per ton of concentrate. These assays are showing only free gold/silver concentrations.

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KAP WR 7/6/78: Cliff Freeman is reportedly still trying to resolve his problems with Fred Finnell on the Little Pan Mine. The State Securities Division of the State Corporation Commission is reviewing the Little Pan operation.

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KAP WR 6/12/78: Cliff Freeman has been interested in leasing a fraction of Fred Finell's Little Pan Prospect. Freeman reported he is now pursuing legal action either on his own or through the Securities Division of the State Corporation Commission against Fred Finell. He reports that Finell has not provided him with the lease, as promised, in return for the help Freeman has provided in trying to develop the property. Freeman still feels the property may have some value. Samples taken by myself and Cliff Freeman of concentrate produced by the lessee of a fraction adjacent to the one in which Freeman is interested had non-detectable quantities of gold, silver, the six platinum group elements, lead, antimony, arsenic and cadmium.

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KAP WR 10/30/79: Dan Clifton reported that there was very little activity on the Jupiter Claims or the Little Pan.

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KAP WR 3/3/80: George Shaffer reported that Bill Willis has purchased the Little Pan and other placers in Black Canyon District, Maricopa County.

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NJN WR 3/7/86: Michael Mansion, 2211 W. Campbell #2019, Phoenix, Arizona 85015 phone, work, 253-6143 ask for station #0505, home 277-1666 called seeking a place to purchase 20 tons of placer material. He is working for a company called M.S.M. Enterprises who have established a experimental pilot placer plant down stream of the Little Pan Mine (f) Maricopa County. He invited any of the department's engineers to visit the site and give their evaluation of the plant.

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# Arizona Department of Mines and Mineral Resources

1502 West Washington, Phoenix, AZ 85007 Phone (602) 255-3795  
Toll Free in Arizona 1-800-446-4259 FAX (602) 255-3777

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November 12, 1996

Honorable Paul G. Rosenblatt  
United States District Judge  
Federal Building 2030 N. 1st Ave. #630  
Phoenix, AZ 85003

RE: CIV 94-2397 PHX PGR  
As a friend of the court:

Dear Judge Rosenblatt:

A basic injustice in our society needs to be rectified. A miner who has worked a valid claim on the public lands for seventeen years has suddenly lost his rights over a typographical error. The Federal Land Policy Management Act FLPMA was never intended to allow expropriation of a citizen's rights. Judicial interpretation under United States v. Locke, 471 U.S. 84 (1985) has set an oppressive precedent, but I do not see where it can be applied to the case of Clifford Freeman.

Clifford Freeman developed a livelihood from his claims through seventeen years of hard work and determination. The area he serves is now being developed and he stands to prosper; but only if his pre-1955 mining claim, the Little Pan Placer (AMC 43697), is reinstated. Under this pre-1955 claim he could sell the sand and gravel bi-products from his gold mining operation without paying a royalty. If his rights to mine and sell these common materials are not returned, BLM-by your action CIV 94-2397 PHX PGR, will require him to pay a royalty that he cannot support. His competitors operate on private land and pay no royalty. He will not be able to compete and this will force him into bankruptcy. The sand and gravel rights to work this property will be lost. His competition will continue to work their private property and with the Little Pan gravels off the market they can charge "what ever the traffic will bear." Mr. Freeman is clearly a loser in this scenario but what about the local market? The competition will inflate the price of sand and gravel and the consumer will pay the price for governmental interference.

I doubt that any Congress of the United States would deliberately write a law designed to strip long established rights from private citizens over a typographical error. The provisions of FLPMA were intended to clear title to thousands and thousands of long abandoned mining claims. It was never intended as tool of government to expropriate the rights of citizens through typographical errors or filings that are ten minutes too late.

Clearly Mr. Freeman had no intention to abandon his AMC 43697 placer claim. It was included in his mining plan and his previous year filings. Abandonment would mean the loss of his entire operation and he was aware of the consequences. The error was made by an associate at a time when Mr. Freeman was under a doctor's care and not able to handle his own affairs. The man who made the error was trying to assist Mr. Freeman and would not have dropped the claim intentionally.

In most civil contracts there is a grace period where an error or omission can be corrected. Courts have upheld this custom and some regulations have been revised to provide tolerance and remedy. In this case the courts have held that a simple typographical error is uncorrectable and unforgivable. BLM has taken the position that they have no discretion under the act and the rules that they wrote. This position has been reinforced by the ILBA and yourself under CIV 94-2397.

This fatal flaw provision of 43 CFR 3833 is disliked by both government and miners. There are documented Arizona cases where the severe and strict interpretation (under Locke) caused a widow to lose her husband's claims because she did not know exactly what to do and when. Individuals wanting the property, staked new claims before the widow became aware that anything was wrong. The property, now worth millions, is controlled by others and the widow died destitute.

A doctor in Yuma lost a claim that he had staked in the 1940's because he did not realize the BLM would be closed on Dec. 31. The claim, was an inholding on a designated Wild Life Refuge that could have easily survived the test of discovery. Under the provision of the Refuge it cannot be relocated. Dr. Burdick did not intend to lose his rights nor did he abandon the property until he was forced off by gun toting federal agents.

Dick Ballas of Gila Bend lost claims his father had staked on the Tohono reservation before it was withdrawn from mineral entry in the 1950's. He had faithfully held these claims until his lawyer presented the affidavits of labor to the BLM three minutes after closing time on the last working day of the year. The IBLA was unyielding and Mr. Ballas cannot restake his claims.

In Yavapai County a secretary inadvertently left off one page of claim entries in an assessment affidavit and the company lost twenty mining claims. Although the company was able to restake many of the claims they lost some key ground in an area withdrawn to protect some marginal antiquities. The miners had protected and preserved this site for years. Once it was identified on the BLM maps it was vandalized and partly destroyed in the following weeks.

The examples go on and on. BLM staffers can tell hundreds of stories where their heart has gone out to claim holders who missed the deadline by minutes or missed a claim on their filings. Their loss became permanent as the property had been withdrawn from mineral location after the initial staking.

H. Mason Coggin to Honorable Paul G. Rosenblatt Nov. 12, 1996 Page 3

I can think of no other area in law or civil decency where correction of a defective filing is not allowed when there is no harm to the rights of others. I would like to see the fatal flaw provision of FLPMA changed to favor the citizens rather than the government. Reversing Locke is an important step in returning the rights to the people rather than gaining more power for government.

If you cannot reverse your previous decision then please sign the written order on the validity of 43697 so that the case can be appealed. Locke must be reversed if not in court then by Congress.

I would be most happy to present these arguments in person and at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Mason Coggin', written over a printed name and title.

H. Mason Coggin, Director

CC  
Cliff Freeman Cliff, Owner  
New River Sand & Gravel  
58202 N51 Ave.  
Phoenix, AZ 85027

Denise Meredith, State Director  
BLM Arizona State Office  
222 N. Central  
PHOENIX, AZ 85004-2208



1 and that the defendants are entitled to the entry of judgment as to  
2 their Second Counterclaim as a matter of law pursuant to  
3 Fed.R.Civ.P. 56.

4 The defendants' motion seeks two types of relief, the first of  
5 which is that the plaintiff be ordered to obtain an approved Plan of  
6 Operations for his New Little Pan claim (AMC 327243) as required by  
7 43 CFR § 3809.1-4. The defendants are entitled to such relief if  
8 they establish that the plaintiff's operations on the claim create  
9 a "cumulative surface disturbance" of more than five acres. The  
10 Court concludes that the defendants have submitted significant  
11 probative evidence that is more than ample to establish a prima  
12 facie case that the New Little Pan claim involves surface  
13 disturbances of more than five acres. That detailed evidence  
14 consists in part of the declarations of BLM geologists Alvin Burch  
15 and Ron Smith and the BLM's document entitled Surface Use  
16 Determination for the "New Little Pan" and "Ditto #1" Unpatented  
17 Placer Mining Claims, AMC327243 and AMC250478, dated October 10,  
18 1995. The evidence submitted by the defendants establishes that the  
19 amount of actual surface disturbance on the New Little Pan claim as  
20 of September 1995 was 9.6 acres.

21 The evidence submitted by the plaintiff, on the other hand,  
22 viewed in the light most favorable to the plaintiff, is insufficient  
23 as a matter of law to support a verdict in his favor on this issue.  
24 The affidavits of the plaintiff and Jimmy Chisum do not sufficiently  
25 rebut the defendants' prima facie case in that they constitute, at  
26 best, merely colorable evidence as to the area of surface

1 disturbance at the relevant time given their conclusory nature and  
2 their time frame relative to the plaintiff's surface disturbance  
3 calculations.<sup>2</sup>

4 The second type of relief requested in the defendants' summary  
5 judgment motion is that the plaintiff be ordered to remove all  
6 materials from his New Little Pan claim site that are not reasonably  
7 incident to his mining operations and which constitute an undue  
8 degradation of the surface resources. 30 U.S.C. § 612(a) provides  
9 that "[a]ny mining claim hereafter located under the mining laws of  
10 the United States shall not be used, prior to issuance of patent  
11 therefor, for any purposes other than prospecting, mining or  
12 processing operations and uses reasonably incident thereto." 43  
13 U.S.C. § 1732(b) requires the Secretary of the Interior to "take any  
14 action necessary to prevent unnecessary or undue degradation of the

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15  
16 <sup>2</sup> The plaintiff's affidavit, which the Court accepts  
notwithstanding its late filing, merely states in relevant part:

17 During 1993 in preparation for and the filing of  
18 the small miners['] exemption I caused and  
19 participated in measuring and adding up the area  
20 disturbed in the LITTLE PAN operation and storage.  
21 Measurements were made with tape measures and  
22 calculated by hand and on a machine. The calculated  
area was < 4 ac[.] ... The area in the 1993  
calculation has been decreased by my cleanup  
efforts. ... The area requiring any reclamation  
effort or disturbed [sic] does not exceed five  
acres and never has.

23 This statement is simply inadequate to rebut the detailed evidence  
24 of measurements and calculations set forth in the defendants'  
Surface Use Determination report and the April 23, 1996 declaration  
of Alvin Burch.

25 The affidavit of Mr. Chisum does not set forth any calculation  
26 of the disturbed surface area. The Chisum affidavit is, moreover,  
technically neither an affidavit, due to its failure to be  
notarized, nor a declaration under 28 U.S.C. § 1746, due to its  
failure to comply with the language requirement of § 1746.

1 lands." An "unnecessary or undue degradation" is defined in part in  
2 43 CFR § 3809.0-5(k) as any "surface disturbance greater than what  
3 would normally result when an activity is being accomplished by a  
4 prudent operator in usual, customary, and proficient operations of  
5 similar character[.]"

6 The Court concludes that the defendants have also met their  
7 burden of establishing a prima facie case as to this issue through  
8 the submission of their Surface Use Determination report. That  
9 report includes a 16-page inventory that lists all items found on  
10 the New Little Pan claim, their quantity and condition, whether they  
11 have a potential operational use, and whether they are reasonably  
12 incident to mining; the inventory is accompanied by some 54 color  
13 photographs of the claim site. Of the some 209 entries on the  
14 inventory list, 125 are noted by the defendants' expert geologists  
15 as being excessive or otherwise not reasonably incident to the  
16 plaintiff's mining operations. The report also includes the expert  
17 opinions of the BLM geologists who concluded that the plaintiff's  
18 operations on the New Little Pan claim are causing unnecessary or  
19 undue degradation of the land in violation of 43 CFR § 3809.0-5(k).

20 The evidence submitted by the plaintiff as to these issues,  
21 through his affidavit and that of Mr. Chisum, is again simply too  
22 insufficient and conclusory to rebut the defendants' prima facie  
23 case even when viewed in the light most favorable to the plaintiff.  
24 The mere fact that the plaintiff may be able to find a use for all  
25 of the items that the defendants seek to have removed is  
26 insufficient to defeat summary judgment; the test is not a

1 subjective one, but is in effect whether a reasonable and prudent  
2 mining operator would retain the items at issue and the Court  
3 concludes that the plaintiff's submitted evidence is not enough to  
4 persuade a reasonable trier of fact to render a verdict in his favor  
5 as to this portion of the Second Counterclaim. The fact that the  
6 plaintiff may have already removed some of the items at issue is  
7 also not sufficient to defeat summary judgment - at best it means  
8 that the plaintiff has already complied with portions of this  
9 summary judgment order.

10 Also pending before the Court is the plaintiff's Request for  
11 Leave to Amend. Having considered the parties' memoranda and oral  
12 argument in light of the plaintiff's proposed First Amended Request  
13 for Judicial Review From IBLA Decision With Damages Complaint,  
14 lodged on December 11, 1995, the Court finds that the motion should  
15 be denied. In deciding whether justice requires granting leave to  
16 amend pursuant to Fed.R.Civ.P. 15(a), one of the factors that the  
17 Court must consider is the futility of the proposed amendment.  
18 Forman v. Davis, 371 U.S. 178, 182 (1962); leave to amend need not  
19 be given if a complaint, as amended, is subject to dismissal. Moore  
20 v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989).

21 The Court concurs with the defendants that the two general claims  
22 raised in the proposed amended complaint would not survive a motion  
23 to dismiss; they also could not be amended to state a viable claim.

24 Cause of Action I in the proposed amended complaint, which  
25 seeks the overturning of the IBLA's determination that the  
26 plaintiff's Little Pan claim (AMC 43697) is invalid, is futile

1 because it in effect replicates the claim in the original complaint  
2 upon which the Court has already granted the defendants partial  
3 summary judgment on the basis of United States v. Locke, 471 U.S. 84  
4 (1985). The invalidity of the Little Pan claim is simply no longer  
5 an issue in this action.

6 Cause of Action II in the proposed amended complaint, which  
7 alleges some type of claim for unfair competition or interference  
8 with contract rights, is also futile because the Federal Tort Claims  
9 Act specifically exempts from its coverage all claims "arising out  
10 of ... slander, misrepresentation, ... or interference with contract  
11 rights[.]" 28 U.S.C. § 2680(h). Furthermore, since the Little Pan  
12 claim has been adjudicated to be invalid, the defendants could not  
13 in any case be subject to liability for informing the plaintiff's  
14 potential customers of that fact or of the effect of that invalidity  
15 on the plaintiff's ability to remove and sell common variety  
16 materials such as sand and gravel from the site without compensating  
17 the United States. Therefore,

18 IT IS ORDERED that Defendant's [sic] Motion for Summary  
19 Judgment (doc. #44) is granted to the following extent: (1) the  
20 plaintiff shall submit a Plan of Operations for the New Little Pan  
21 claim, AMC 327243, to the Bureau of Land Management in compliance  
22 with 43 CFR § 3809.1-5 no later than November 15, 1996; and (2) the  
23 plaintiff, to the extent that he has not already done so, shall  
24 remove from the site of the New Little Pan claim no later than  
25 November 15, 1996 all items listed as being not reasonably incident  
26 to mining in Table 1 "Equipment Inventory for the New Little Pan and

1 Ditto #1 Placer Mining Claims, 9/19/95", set forth in pages 8  
2 through 22 of the document entitled "Surface Use Determination for  
3 the "New Little Pan" and "Ditto #1" Unpatented Placer Mining Claims,  
4 AMC327243 and AMC250478", Exhibit 1B to Defendant's [sic] Statement  
5 of Undisputed Facts in Support of Motion for Summary Judgment, filed  
6 February 16, 1996 (doc. #45).

7 IT IS FURTHER ORDERED that the plaintiff's Request for Leave to  
8 Amend (doc. #39) is denied.

9 IT IS FURTHER ORDERED that the plaintiff's Motion for Leave to  
10 File Out of Time Reply to Defendant's [sic] Response to Motion to  
11 Amend (doc. #50) is granted.

12 IT IS FURTHER ORDERED that the plaintiff's Motion to Strike  
13 Defendant['s] Motion for Summary Judgment and Second Counterclaim  
14 (doc. #51) is denied.

15 IT IS FURTHER ORDERED that the plaintiff's Motion to Vacate  
16 Scheduling Order (doc. #52) is granted to the extent that all  
17 remaining portions of the Scheduling Order entered on August 28,  
18 1995 (doc. #29) are vacated in their entirety.

19 IT IS FURTHER ORDERED that a status hearing shall be held on  
20 Monday, December 9, 1996 at 1:30 p.m. in Courtroom No. 1, for the  
21 purpose of informing the Court as to the status of compliance with  
22 this Order and the defendants' intentions regarding the unresolved  
23 issue of the damages prayed for in their First Counterclaim.

24 Dated this 28th day of August, 1996.

25   
26 Paul G. Rosenblatt  
United States District Judge

## Arizona Department of Mines and Mineral Resources

1502 West Washington, Phoenix, AZ 85007 Phone (602) 255-3795

Toll Free in Arizona 1-800-446-4259 FAX (602) 255-3777

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May 03, 1996

Denise P. Meridith,  
State Director  
Bureau of Land Management  
3707 N. 7th St. , AZ 85011

Dear Director Meridith:

I want to thank you and the other members of the Arizona delegation who took prompt consideration of Clifford B. Freeman's situation. In reviewing the correspondence, apparently I did not emphasize the desired results.

The problem is the severity of the fatal flaw provision of FLPMA and what it has done to some small claim holders in special situations. As written the act provides no forgiveness and no opportunity to correct typographical errors or oversights. If the paper work is not correct and in the proper BLM office on or before closing time on the last working day of the year **A MINERAL CLAIMANT WILL LOOSE HIS CLAIM.** BLM's Arizona State Director, Denise P. Meridith, is supported in her opinion, that BLM has no discretion. Appeals by claim holders to the ILBA have not been effective. ILBA has taken an unyielding position in fatal flaw decisions.

At the time FLPMA was passed, the fatal flaw provision was touted as a way to remove long standing abandoned claims from clouding the title. It was never intended to support the taking of a citizen's rights, through errors or omissions.

There are documented cases where a widow has lost her husband's claim because she did not know exactly what to do and when. Individuals wanting the claim, staked it before the widow became aware that anything was wrong. The property is now controlled by two groups who are asking for potential millions for leasing the widow's defaulted property.

An eye doctor in Yuma recently lost a claim that he had staked in the 1940's because he did not realize the BLM would be closed on Dec. 31. The claim was an inholding on a designated Wilderness that could have survived the test of discovery. Under the provision of the Wilderness Act it cannot be relocated. Dr. Burdock did not intend to loose his rights to this claim. He did not abandon the property until he was forced off by federal officials.

Dick Ballas of Gila Bend lost a claim his father had staked on the Tohono O'odoom reservation before it was withdrawn in the 1950's. He had faithfully held this claim until

his lawyer presented the affidavits of labor to the BLM three minutes after closing time on the last working day of the year. The IBLA was unyielding and Mr. Ballas cannot restake his claim.

In Yavapai County a secretary inadvertently left off one page of claim entries and although the company was able to restake many of the claims, they lost some key ground they had held in an area that had been withdrawn in the interim.

The examples go on and on and BLM staffers in the western states could tell hundreds of horror stories where their heart has gone out to claim holders who missed the deadline by minutes or missed a claim on their filings and lost the claim because the property had been withdrawn from mineral location after the initial staking.

Such is the case of Clifford B. Freeman. If his appeal is unsuccessful he will lose the advantages provided to him under his pre-1955 location over a typographical error. I can assure you, he had no intention of leaving this claim out of his filings.

I can think of no other area in law or civil decency where correction of a defective filing is not allowed when there is no harm to the rights of others. I would like to see the fatal flaw provision of FLPMA changed to allow the correction of a defective filing within 90 days of notification by the BLM. Such a provision would most likely be supported by most BLM staffers who deal with mining claims. This should be a minor housekeeping provision.

Last year, was the first year that BLM did not send out notices that annual assessment and rentals were due as had been their policy in the past. I can think of no other area where I owe money that I do not receive a bill. All other tax collecting agencies send me a bill if they feel I owe them some money why not the BLM. This provision needs to be a part of the housekeeping measure.

Sincerely,



H. Mason Coggin, PE & LS  
Director

CC: Denise P. Meridith, State Director BLM  
3707 N. 7th Street  
POB 16563  
Phoenix, AZ 85011-6563

**J. D. HAYWORTH**  
6TH DISTRICT, ARIZONA



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FLAGSTAFF, AZ 86001  
(602) 556-8760

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0306**

May 3, 1996

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AND GSEs  
**VICE CHAIR**

Mr. H. Mason Coggin  
Department of Mines and Mineral Resources  
Arizona Mining and Mineral Museum  
1502 West Washington St.  
Phoenix, AZ 85007-3210

Dear Mr. Coggin:

In response to my latest inquiry on your behalf, enclosed you will find the letter that I received from the Bureau of Land Management.

After reading the letter over, I think you will find it to be self-explanatory. Should you have any further questions regarding this situation, please do not hesitate to contact my office.

Thank you for giving me the opportunity to be of assistance to you. It is important to me to always be of service to my constituents.

Best regards,

J.D. Hayworth  
Member of Congress

JDH:

**J. D. HAYWORTH**  
6TH DISTRICT, ARIZONA

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0306**

April 23, 1996

**COMMITTEES:**  
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**VICE CHAIR**

Mr. H. Mason Coggin  
Department of Mines and Mineral Resources  
Arizona Mining and Mineral Museum  
1502 West Washington St.  
Phoenix, AZ 85007-3210

Dear Mr. Coggin:

In reference to my inquiry on your behalf, I received the enclosed interim letter from the Bureau of Land Management.

I think you will find the letter self-explanatory. However, if you should have any questions or need to provide additional information, please contact Lynn Yee in my Mesa office at (602) 926-4151. As soon as I have further information, I will be back in touch with you.

It is important to me to always be of service to my constituents, whether it be through helping you with your individual problems or through the legislative process. Thank you for calling on me.

Best regards,

A handwritten signature in black ink, appearing to read "J.D. Hayworth".

J.D. Hayworth  
Member of Congress

JDH:ly



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Arizona State Office  
3707 N. 7th Street  
P.O. Box 16563  
Phoenix, Arizona 85011

3833 (AZ 933-BK)  
AMC 43697

IN REPLY REFER TO:

MAY 03 1996

May 1, 1996

Honorable J.D. Hayworth  
1818 East Southern Avenue, Suite 3B  
Mesa, AZ 85204

Dear Mr. Hayworth:

This letter is in response to an inquiry from Mason Coggin, Director of the Arizona Department of Mines and Mineral Resources, regarding your constituent Clifford B. Freeman.

Mr. Coggin sent an identical letter to Congressman Bob Stump, which we responded to in a letter dated April 15, 1996 (enclosed).

This letter explains the position of the Bureau of Land Management in this matter.

Sincerely,



Denise P. Meridith  
State Director

Enclosure

cc: Your Washington Office



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Arizona State Office  
3707 N. 7th Street  
P.O. Box 16563  
Phoenix, Arizona 85011

IN REPLY REFER TO:

3833 (AZ 933-BK)  
AMC 43697

April 17, 1996

Honorable John Shadegg  
U.S. House of Representatives  
1158 East Missouri Avenue, Suite 100  
Phoenix, AZ 85014

Dear Mr. Shadegg:

This letter is in response to an inquiry from Mason Coggin, Director of the Arizona Department of Mines and Mineral Resources, regarding your constituent Clifford B. Freeman.

Mr. Coggin sent an identical letter to Congressman Bob Stump which we responded to in a letter dated April 15, 1996, (enclosed).

The letter explains the position of the Bureau of Land Management in this matter.

Sincerely,

Denise P. Meridith  
State Director

Enclosure

cc: Your Washington Office

JOHN SHADEGG  
4TH DISTRICT, ARIZONA  
REPUBLICAN POLICY COMMITTEE  
FRESHMAN CLASS REPRESENTATIVE



Congress of the United States  
House of Representatives  
Washington, DC 20515-0304

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ASSISTANT WHIP  
WASHINGTON, D.C. OFFICE:  
503 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3361  
DISTRICT OFFICE:  
1158 EAST MISSOURI AVENUE  
SUITE 100  
PHOENIX, AZ 85014  
(602) 248-7779

July 26, 1996

Mr. Mason Coggin  
Arizona Department Of Mines and Mineral Resources  
1502 West Washington  
Phoenix, Arizona 85007

Dear Mason:

Thank you for contacting me regarding the situation facing Clifford Freeman with the "fatal flaw" provision of the Federal Land Policy and Management Act (FLPMA). I appreciate having this opportunity to address the issue and I apologize for the delay in responding.

The requirements for the Recordation of Mining Claims are codified in Title 43, Section 1744 of the United States Code. As you mentioned in your letter, the law states that failure to follow the proper filing procedures constitutes abandonment of a claim and does not allow any leeway for correcting minor errors in the filing. This "fatal flaw" provision was declared Constitutional by the United States Supreme Court in *United States v. Locke*, 471 U.S. 84 (1985).

Congress addressed this issue in H.R. 2491 (the Balanced Budget Act of 1995) which was vetoed by President Clinton. Chapter 5, Section 5373 of H.R. 2491 would have allowed claimants to cure innocent mistakes within 30 days of filing. Unfortunately, the President's veto of this bill has made it extremely unlikely that significant reform of any portion of the mining law will take place this year.

Let me assure you that I fully support efforts to reform mining law to address the problem outlined in your letter at the first available opportunity. Please do not hesitate to contact me in the future on this or any other issues of concern.

Sincerely,

John Shadegg  
Member of Congress

JS:ef

VETERANS' AFFAIRS COMMITTEE  
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SUBCOMMITTEE ON HOSPITALS AND  
HEALTH CARE  
NATIONAL SECURITY COMMITTEE  
VICE CHAIRMAN  
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SUBCOMMITTEE ON MILITARY  
PROCUREMENT  
REPUBLICAN STEERING COMMITTEE

BOB STUMP  
3D DISTRICT, ARIZONA  
211 CANNON BUILDING  
WASHINGTON, DC 20515-0303  
(202) 225-4576  
DISTRICT OFFICE:  
230 N. FIRST AVENUE  
2001 FEDERAL BUILDING  
PHOENIX, AZ 85025  
(602) 379-6923

Congress of the United States  
House of Representatives  
Washington, DC 20515-0303

April 23, 1996

Mr. H. Mason Coggin  
Director for the Board of Governors  
Department of Mines and Mineral Resources  
1502 West Washington Street  
Phoenix, Arizona 85007-3210

Dear Mr. Coggin,

On February 29, you had written to me requesting that I contact the Bureau of Land Management (BLM) concerning the mining claim of a constituent of mine, Mr. Clifford B. Freeman, whose mining claim had been declared null and void. While my inquiry into the matter did yield the enclosed letter from the BLM in response, I'm afraid the news will not be what you and Mr. Freeman had hoped for.

According to the letter, since Mr. Freeman did not meet the annual filing requirement, he would have to seek recourse in the federal court system and the Interior Board of Land Appeals.

I appreciate your taking the time to contact me on this important matter and hope that you will not hesitate to contact me on any other issues of concern.

Sincerely,



BOB STUMP  
Member of Congress

BS/tlg



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Arizona State Office  
3707 N. 7th Street  
P.O. Box 16563  
Phoenix, Arizona 85011

IN REPLY REFER TO:

3833 (AZ 933-BK)  
AMC 43697

April 15, 1996

Honorable Bob Stump  
U.S. House of Representatives  
211 Cannon Building  
Washington, DC 20515-0303

Dear Mr. Stump:

This letter is in response to an inquiry from Mason Coggin, Director of the Arizona Department of Mines and Mineral Resources, regarding your constituent Clifford B. Freeman. Mr. Coggin's letter, dated February 29, 1996, was forwarded to the Director of the Bureau of Land Management (BLM). Subsequently, the Director forwarded the letter to the Arizona State Office for a response.

Mr. Freeman failed to file evidence of assessment work for the Little Pan Placer Mining Claim (AMC 43697) by December 30, 1992, as required by the General Mining Law of 1872; 17 Stat. 91, as amended, the Federal Land Policy and Management Act of 1976; 90 Stat. 2743, as amended, and pursuant to the Regulations at 43 CFR 3833.4(a). On September 15, 1993, Mr. Freeman was issued an Abandoned and Void Decision from the Arizona State Office, Bureau of Land Management, for failure to file. Mr. Freeman appealed that Decision to the Interior Board of Land Appeals (IBLA). By an Order from the IBLA, dated October 28, 1994, the September 15, 1993, Decision of the Bureau of Land Management was affirmed. The laws and regulations are very clear that failure to timely file is a fatal error, and were upheld by the U.S. Supreme Court in *U.S. v. Locke*, 471 U.S. 84 (1985). Mr. Freeman has appealed the IBLA Order to the United States District Court, District of Arizona.

It is unfortunate that Mr. Freeman failed to meet the annual filing requirement. However, contrary to the suggestion by Mr. Coggin, the BLM has no discretion to overlook a failure to file, or to vacate its Decisions for failure to file, without a showing that BLM erred. The proper forum for resolving those issues is through the IBLA and the Federal court system.

The Act of July 23, 1955, 69 Stat. 367, removed common varieties of sand and gravel, among other minerals, from location under the 1872 Mining Law, *supra*. Because the Little Pan Placer Mining Claim (AMC 43697) was located prior to the Act of July 23, 1955, *supra*, Mr. Freeman could mine sand and gravel from the claim, depending on the use of the material, and if a discovery under the 1872 Mining Law, *supra*, had been made as of the date of the Act. Sand and gravel for use as borrow or fill material has never been locatable under the 1872 Mining Law, *supra*. A determination of a discovery was never made on the

Little Pan Placer Mining Claim (AMC 43697). Thus, there is room for doubt that Mr. Freeman ever had the authority to remove and sell the sand and gravel pursuant to the 1872 Mining Law, *supra*. However, in this case the point is moot because the Little Pan Placer Mining Claim (AMC 43697) no longer exists. Currently, the only method of disposal of sand and gravel, without a determination that the mineral deposit is an uncommon variety, is through a mineral materials sales contract. Mr. Freeman was informed that he could purchase the material for fair market value in order to provide it to his customers. He has refused that option.

While there may be some dislike of the Laws and Regulations as written, the BLM Decision of September 15, 1993, was properly issued pursuant to the Laws and Regulations in effect at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise P. Meridith", with a long horizontal flourish extending to the right.

Denise P. Meridith  
State Director

cc: Your Arizona Office

JOHN SHADEGG  
4TH DISTRICT, ARIZONA

REPUBLICAN POLICY COMMITTEE  
FRESHMAN CLASS REPRESENTATIVE

ASSISTANT WHIP

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SUITE 100  
PHOENIX, AZ 85014  
(602) 248-7779



Congress of the United States  
House of Representatives  
Washington, DC 20515-0304

April 19, 1996

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NATIONAL SECURITY, INTERNATIONAL AFFAIRS,  
AND CRIMINAL JUSTICE

Mr. H. Mason Coggin  
Director  
Department of Mines and Mineral Resources  
1502 West Washington  
Phoenix, Arizona 85007-3210

Dear H. ~~Mason~~

Please find enclosed the response I have received from the Bureau of Land Management regarding my inquiry in your behalf.

As stated in the letter, the BLM believes that they acted in accordance to Laws and Regulations. Mr. Freeman has appealed the Interior Board Land Appeals order to the U.S. District Court. Since this is now a legal matter, as a Member of the U.S. House I am precluded from intervening on Mr. Freeman's behalf.

If I can ever be of further assistance to you on this or any other matter in the future, please do not hesitate to let me know.

Sincerely,

John Shadegg  
Member of Congress

JS:sdn

14 APR 15 1981

October 29, 1980

Mr. Jim Henderson  
5944 Luther Lane, Suite 806  
Dallas, Texas 75225

Dear Mr. Henderson:

This letter is to transmit an invoice for consulting services and information supplied to you on October 20, 1980, relative to placer operations in the Agua Fria area, New River, or TipTop Mining District north of Phoenix, Arizona.

I believe you may have been referring to the Little Pan Placers, NE $\frac{1}{4}$ , Section 29, T8N R2E, Maricopa County. Another similar placer property nearby is Horseshoe Bar in Section 16. These properties came to the attention of the Arizona Bureau of Mines about three years ago when Mr. Frank Finnel, Jr., of Scottsdale and Billy Willis were involved. At that time, it was considered to be a promotional operation, unsuccessful presumably for a lack of significant tonnage of proven ore plus no economical, environmentally acceptable recovery process.

I see no reason to change our former opinion; i.e., that the property is without appreciable economic value. Further, I have never been able to understand Dr. Duane Brown's special process; especially, how can it be economically feasible or operable under current EPA regulations?

As I said, if you wish to consider serious involvement, I suggest that you should secure your own samples, and assays, and make a pilot run to prove the proposed recovery process. You may wish to check with John Jett, Director, Department of Mineral Resources, State Fairgrounds, in Phoenix, phone (602) 255-3791. Also, you might check with the Phoenix Better Business Bureau concerning Arizona Mining Associates (quite different from the Arizona Mining Association) and Americhem, Inc. I have not heard of either of these organizations.

In any case, it was a pleasure to talk to you and I hope some of this information may be useful to you. Good luck.

Sincerely,

David D. Rabb  
Metallurgist

cc: John Jett

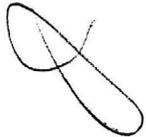
MEMORANDUM

To: John H. Jett, Director  
From: Ken A. Phillips, Mineral Resources Engineer  
Subject: Attached Semiquantitative Analysis  
On Placer Mineral Concentrate  
From The Little Pan Mine  
Date: March 20, 1979

The attached spectrographic analysis ("Semiquantitative Analysis For Placer Mineral Concentrate") was run on concentrate produced from the Little Pan Mine, New River District, Maricopa County. The sample was collected by Cliff Freeman, a potential purchaser of a fraction on the property and myself. The sample was divided and four (4) ounces was mailed to Pacific Spectrochemical Laboratory, Inc. in Los Angeles. The analysis was paid for by Mr. Freeman and the results were mailed back to the Department per Mr. Freeman's request. The values were given to him over the phone a year ago, however he has never come in to pick up the written results. Therefore, the copies of the results should be included in the file. Duplicate samples of concentrate will also be retained.

KAP:mw

Enc:



TO:

(213) 838-5939

(213) 870-3749

State of Arizona  
Department of Mineral Resources  
Mineral Building, Fairgrounds  
Phoenix, Arizona 85007

**Pacific Spectrochemical Laboratory, Inc.**

Chemical and Spectrographic Analysis

2558 Overland Avenue

Los Angeles, California 90064

January 9, ~~1987~~

1978

Attention: Ken A. Phillips

PURCHASE ORDER NO.

SEMIQUANTITATIVE ANALYSIS

"Placer Mineral Concentrate"

Fe-	62.%	<i>100:1 Concentration Ratio</i>	
Si-	2.7		
Ti-	1.1		
Al-	0.61		
Cr-	0.059		
Mg-	0.27		
Mn-	0.38		
Ni-	0.0051		
V-	0.043		
Cu-	0.0084		
Co-	0.012		
Zr-	TR<0.005		
Y-	0.054		
Yb-	0.018		
Ca-	0.19		
Au-	ND<0.008	< 2.3 g Ton	.023, 00000875
Ag-	" 0.0002	< 0.05 g Ton	.0005
Pt-	" 0.004	< 1.166 g Ton	.0166
Pd-	" 0.003	< 0.89 g Ton	.0089
Rh-	" 0.01	< 2.92 g Ton	.0292
Ru-	" 0.008	< 2.3 g Ton	.023
Ir-	" 0.09	< 26.25 g Ton	.26
Os-	" 0.09	< 26.25 g Ton	.26
Pb-	" 0.02	< 5.83 g Ton	.0583
Sb-	" 0.008	< 2.3 g Ton	.023
As-	" 0.10	< 29.2 g Ton	.292
Cd-	" 0.03	< 8.9 g Ton	.089
Other elements	nil		

9114

Respectfully submitted,

*Hal W. Johnson*

PACIFIC SPECTROCHEMICAL LABORATORY, INC.

MEMORANDUM

To: John H. Jett, Director  
From: Ken A. Phillips, Mineral Resources Engineer  
Subject: Attached Semiquantitative Analysis  
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From The Little Pan Mine  
Date: March 20, 1979

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KAP:mw

Enc:



TO:

(213) 838-5939

(213) 870-3749

State of Arizona  
Department of Mineral Resources  
Mineral Building, Fairgrounds  
Phoenix, Arizona 85007

Attention: Ken A. Phillips  
PURCHASE ORDER NO.

Pacific Spectrochemical Laboratory, Inc.

Chemical and Spectrographic Analysis

2558 Overland Avenue  
Los Angeles, California 90064

January 9, 1987

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Ti-	1.1
Al-	0.61
Cr-	0.059
Mg-	0.27
Mn-	0.38
Ni-	0.0051
V-	0.043
Cu-	0.0084
Co-	0.012
Zr-	TR<0.005
Y-	0.054
Yb-	0.018
Ca-	0.19
Au-	ND<0.008
Ag-	" 0.0002
Pt-	" 0.004
Pd-	" 0.003
Rh-	" 0.01
Ru-	" 0.008
Ir-	" 0.09
Os-	" 0.09
Pb-	" 0.02
Sb-	" 0.008
As-	" 0.10
Cd-	" 0.03
Other elements	nil

Respectfully submitted,

PACIFIC SPECTROCHEMICAL LABORATORY, INC.