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PRINTED: 05/30/2002

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: PICTURE ROCK NOS. 1-7

ALTERNATE NAMES:

ARIZONA PICTURE ROCK QUARRY
SOUTHWESTERN STONE
CHARTRAND QUARRY

COCONINO COUNTY MILS NUMBER: 441

LOCATION: TOWNSHIP 11 N RANGE 14 E SECTION 3 QUARTER E2

LATITUDE: N 34DEG 22MIN 02SEC LONGITUDE: W 110DEG 49MIN 43SEC

TOPO MAP NAME: O W POINT - 7.5 MIN

CURRENT STATUS: PRODUCER

COMMODITY:

STONE SANDSTONE
STONE PICTURE VAR.
STONE DIMENSION

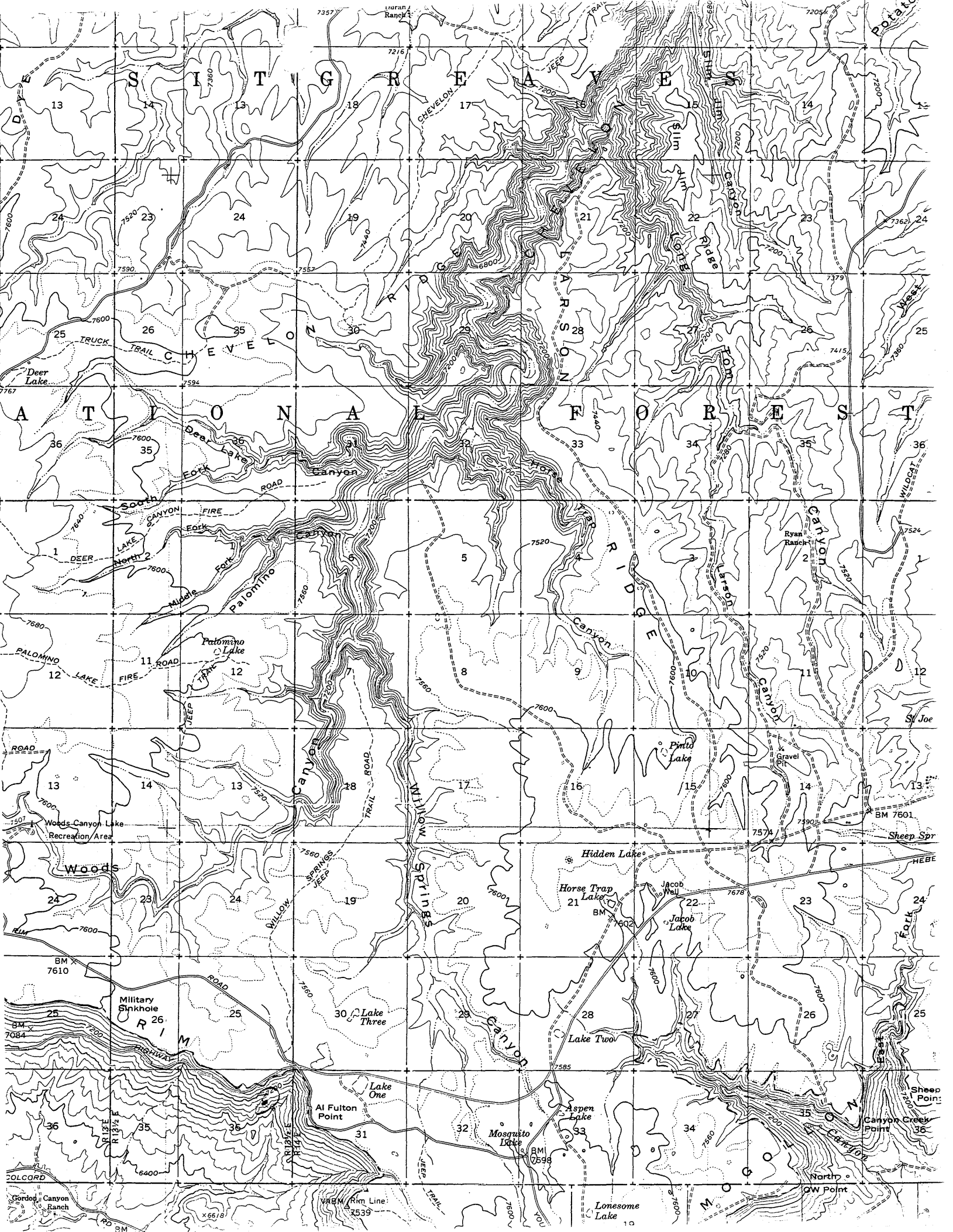
BIBLIOGRAPHY:

ADMMR PICTURE ROCK FILE
INTERIOR BOARD OF LAND APPEALS 11 IBLA 194
ADMMR, 1996, DIRECTORY OF ACTIVE MINES IN
ARIZONA, P. A15

[illegible]

OW Point, AZ
7.5' Quad

SIT GREAVES





IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

*Dec 1041143 T11N R14E
Dec 34 T12N R14E*

UNITED STATES

v.

LEE CHARTRAND ET AL.

*Exempts for
only full report
see Down Service*

IBLA 70-556

Decided June 25, 1973

Appeals from decision (Arizona A-1186) of Administrative Law
Judge L. K. Luoma declaring certain mining claims to be null and
void and declaring portions of other claims to be valid.

Affirmed.

Mining Claims: PRACTICE AND PROCEDURE - Appeals - Hearings - administrative
law judges - evidence - findings

Upon appeal from a decision of an Administrative Law Judge,
the Board of Land Appeals may make all findings of fact and
conclusions of law based upon the record just as though it
were making the decision in the first instance.

Mining Claims: PRACTICE AND PROCEDURE - Appeals - Hearings -
administrative law judges - evidence - findings

The Board of Land Appeals has authority to reverse the findings
of an Administrative Law Judge. However, where the resolution
of a case depends primarily upon the Judge's findings of credi-
bility, which in turn are based upon his reaction to the
demeanor of witnesses, his findings will not be lightly
set aside.

Mr. Frishberg, dissenting in part:

I concur in that part of the majority and dissenting opinions affirming Judge Luoma's decision holding Picture Rock Claims Nos. 1 through 7, Arizona Picture Rock Claims 1, 3 and 4, and portions of Arizona Picture Rock Claims 2 and 5 null and void. I also agree with the majority's conclusions that the building stone found in that 40 acres possesses a property giving it a distinct and special value and, hence, is locatable. 30 U.S.C. § 611 (1970). However, I dissent from the majority's affirmation of the holding below that 40 acres within Arizona Picture Rock Nos. 2 and 5 contain a discovery of a valuable mineral deposit.

I share the dissatisfaction of Mrs. Thompson and Mr. Ritvo with the majority's treatment of the failure of the Judge to find that the land is chiefly valuable for building stone. As pointed out in the dissent, such a conclusion is required by 30 U.S.C. § 161 (1970). Contestant alleged that the land is not chiefly valuable for building stone. Accordingly, once the Judge held that the building stone on 40 acres was locatable and that such stone could be marketed at a profit, he was required to find that the land was chiefly valuable therefor before concluding that a discovery existed. He did not do so, nor does the record support such a conclusion.

In connection with the remaining claims (the Arizona Picture Rock Nos. 1-5) the amended complaint charged that a valid mineral discovery did not exist within the limits of the claims, that the land embraced within the limits of the claims was nonmineral in character, that the mineral material found within the limits of the claims was not a valuable mineral deposit within the meaning of 30 U.S.C. § 611 (1970), that the land included within the limits of the claims was not chiefly valuable for minerals, that the claims were not located in good faith, and that the claims were not located by bona fide locators acting in association and were therefore in excess of the acreage allowed by the mining laws of the United States.

Based upon all the evidence presented at the hearing the Judge found that the deposits of stone in the Arizona Picture Rock Nos. 1, 3, and 4 were of a common variety. Thus, he concluded that these three claims were not subject to location after July 23, 1955, and declared the claims null and void. In connection with the Arizona Picture Rock Nos. 2 and 5 the Judge found that a deposit of stone exposed in a quarry situated on portions of both of these claims possessed a unique colorization characteristic which occurred in very limited areas of the widespread Coconino sandstone deposits found in the area. The Judge found that the stone from this quarry commanded a higher price in the marketplace than other stone used for the same purposes. Thus, he concluded that the deposit of

to husband
R. J. - Box 574
Shawdon Aug 1909

RECEIVED
JUN 13 1909
U. S. DEPT. OF AGRICULTURE
BUREAU OF MINERAL RESOURCES

6. 11. 09

Hi -
From Geo. E. Tucker
Phoenix

Here's the prints I promised to
send you. See not a photographer
and the prints are even not what the
actual store looks like. But you can
use your imagination. Most of the people
who noticed our store display at the fair
were astonished and many said,
"Oh, isn't that beautiful!"

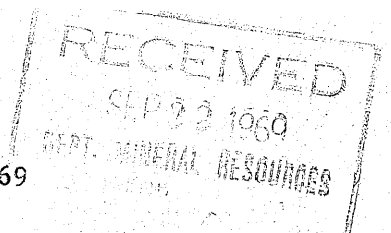
I have a chance to sell 500 Tompkins
of cut stone to Portland Oregon, to a dealer,
if I can compete with the Rockford price.
I have many more interested outlets for
the stone.

I expect the mineral bearing to
come up at any time now. If it doesn't
it is sort of obvious about the intention
of the Forest Service, isn't it? The



BUREAU OF LAND MANAGEMENT
Office of Hearing Examiners
4209 Federal Building
Salt Lake City, Utah 84111

August 12, 1969



NOTICE OF HEARING

UNITED STATES of AMERICA,	:	ARIZONA 1186
Contestant	:	
v.	:	Involving the Picture Rock Nos.
	:	1 thru 7 and the Arizona Picture
	:	Rock Nos. 1 thru 5 placer mining
LEE CHARTRAND, BARBARA CHARTRAND,	:	claims, situated in Secs. 3, 10
ROBERT CHARTRAND, LLOYD CHARTRAND,	:	and 11, T. 11 N., and Sec. 34,
DONALD CHARTRAND, DEBRA CHARTRAND,	:	T. 12 N., R. 14 E., GSR Meridian
DENISE CHARTRAND, and	:	(within the Sitgreaves National
ROBERT B. JONES,	:	Forest), Coconino County, Arizona.
Contestees	:	

This contest having arisen through the filing of a complaint by the contestant, served upon the contestee(s) in conformance with the Hearings Procedures of the Department of the Interior (43 CFR, Part 1850), and an answer having been served by the contestee(s), the parties to this proceeding are notified:

1. NOTICE TO APPEAR

The parties are directed to appear at a hearing before a Hearing Examiner on September 24, 1969, commencing at 10 a.m., in Room 8421 Federal Bldg. (8th floor courtroom), 230 North First Avenue, Phoenix, Arizona

2. NATURE OF PROCEEDING

The hearing will be for the purpose of receiving oral testimony under oath, and documentary evidence on all material issues.

3. MATTERS ASSERTED

The matters of fact and law asserted in this contest are those set forth in the complaint dated August 25, 1967 and in the answer thereto served on contestant on September 22, 1967.

4. LEGAL AUTHORITY AND JURISDICTION

The hearing will be held under the authority of and pursuant to the Hearings Procedures of the Department of the Interior (43 CFR, Part 1850). A copy of these regulations is enclosed for parties other than the United States.

5. FEES - ATTORNEYS AND WITNESSES

Each party must pay the fees and other charges of its attorneys, and the attendance fees and other costs of any witnesses who, at the party's request, appear at the hearing or at the taking of any deposition.

6. TRANSCRIPT OF PROCEEDING

A verbatim stenographic record of the hearing will be made. If any party to the hearing, other than the Government, desires to obtain a copy of the transcript for his own use he may do so by placing an order directly with the reporter at the hearing. Payment for any copies ordered must be made to the reporter.

L. K. Luoma
L. K. Luoma
Hearing Examiner

Distribution:
By Certified Mail

Mr. Lee Chartrand (for Contestees except Robert B. Jones) ✓
Star Route No. 5
Show Low, Arizona 85901
Mr. Robert B. Jones
P. O. Box 5
White River, Arizona 85941
Mr. Richard L. Fowler, Attorney in Charge
Office of the General Counsel, USDA

Room 4017, Federal Building
517 Gold Avenue, S. W.
Albuquerque, New Mexico 87101

April 17, 1969

Mr. Lee Chartrand
Route 5, Box 529
Show Low, Arizona 85901

Dear Mr. Chartrand:

In your letter of April 7, 1969, you inquired about the basis for the charges in Contest No. A-1186 involving your Picture Rock Nos. 1-7 and Arizona Picture Rock Nos. 1-5 claims.

In accordance with your request, the following answers are identified by the same designation as the charge in the Complaint to which the answer applies:

(a) This charge is based primarily on the Interior Department Decision of Castle v. Womble, 19 L.D. 455 (1894). It contains the "prudent man rule" upon which both the Interior Department and the Courts rely. The statute referred to in that case is now found in 30 U.S.C. 23.

(b) The statute supporting this charge is 30 U.S.C. 21. The basic reasons on what is nonmineral in character are contained in decisions of the Interior Department and the Courts.

(d) "... a valuable mineral deposit within the meaning of 30 U.S.C. 611." refers to the interpretations contained in decisions by the Department of the Interior and the Courts.

(e) 30 U.S.C. 21.

(f) Good faith is primarily a matter of case law rather than statute. This charge raises a question of the intent of the locators in either (1) the location of the claim, or (2) the location of excessive acreage.

(g) 30 U.S.C. 35. This charge is based on an opinion that the use of children within your family as co-locators is improper. This statute provides that no association placer shall include more than 20 acres for each individual claimant. In decisions it has been held that each party must have a bona fide, individual interest in his or her 20-acre portion and that agents, or families, cannot be used to allow the real party in interest to gain control over more than a 20-acre portion.

These are the clearest answers we can give to your questions. In view of the complexities of the mining laws as interpreted by the Courts and the Department of the Interior, these answers should not be considered as dealing with all possible aspects of the issues.

Sincerely,

RICHARD L. FOWLER

RICHARD L. FOWLER
Attorney in Charge

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX, ARIZONA 85007



May 13, 1969

Lee Chartrand
Route 5, Box 529
Show Low, Arizona 85901

Dear Mr. Chartrand:

Thanks for your May 7th letter, and congratulations on the Blue Ribbon you won on the stone - that should definitely qualify it as not common.

We have copied from our United States Code - Title 30, sections 21 and 23. Our book was published in 1958 and we have no amendments or additions - don't even know if there have been changes!

Have checked many citations and references but no two law cases are the same and nearly all our references deal with mining claims on metallic minerals, so have found nothing further that would be of assistance to you.

Sorry, I can make nothing further out of Mr. Fowler's letter than the reference he gives to the laws. Its the interpretation of the law that makes the difference in the decision handed down, and we all ~~attempt~~ to have it interpreted to meet our needs. We have no attorney on the staff or I would attempt to give you more of a concrete answer. His last sentence is most ~~appropo~~.

Sorry not to be of more assistance, but wish you all the luck in the world -

Best regards -

Adm. Assistant.

C
O
P
Y

Shor Son, Arizona
Rt 5 - Box 529
May 7, 1969

Department of Mineral Resources
Phoenix, Arizona

Dear Mrs Dove,

Thanks for the copy of the court decision on the
Moplaity case and your much appreciated note
of 4.10.69.

Enclosed is the latest correspondence to date
with the Forest Service. It seems to me they
are getting the 'cart' before the 'horse' and changing
me with a lot of things before they have proven
the stone to be a 'common variety'. Sometimes I
feel like a criminal.

I wonder if you would have the time to
further clarify Mr Fowler's letter of 4.17.69.

I don't have the wording of 30 USC 21 and 30 USC 23
in my copy of the 'Regulations, etc' Circular no. 2149.

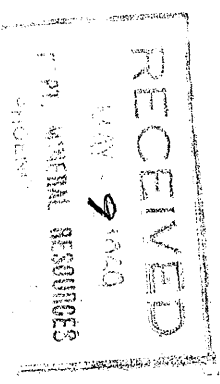
Yrs,

We won a blue ribbon

in the Northern Yuma County Fair
in October, March 20-23. Will

send you a copy of our stone display
picture when they get developed.

Sincerely Yours,
Lee Oakland



Show Low, Arizona
April 7, 1969

Mr. Richard L. Fowler
Attorney in Charge
Office of the General Counsel
U. S. Department of Agriculture
Albuquerque, New Mexico

Dear Mr. Fowler:

In preparing for the mineral hearing, we are having difficulty in determining just what is implied in those charges in the contest of mining claims A-1186.

In our copy of the 'Contestant's Motion to Amend Complaint' dated January 21, 1969, the charges are identified as:

(5a), (5b), (5c), and additional charges as: (d), (e), (f) & (g).

In answering the following questions, I would appreciate your listing the answers as: (a), (b), (c), (d), (e), (f) & (g).

question (a).

Which mining laws of the U. S. are you referring to?

question (b).

Which mining laws are you referring to?

charge (c). no question

question (d).

What is the Forest Service's interpretation of the 'meaning of 30 U. S. C. 611.' ?

question (e).

What law is the basis for this charge?

question (f).

Which mining laws of the U. S. are you referring to?

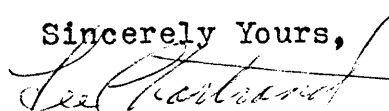
What is the basis for this charge?

question (g).

What laws are you referring to in charge: "The Arizona Picture Rock Nos. 1-5 claims were not located by bona fide locators acting in association" ?

Which mining laws of the U. S. are you referring to?

Sincerely Yours,



Lee Chartrand

Show Low, Arizona
Route 5, Box 529
February 19, 1969

U. S. Department of the Interior
Bureau of Land Management
Phoenix, Arizona

and

Mr. Richard L. Fowler
Attorney in Charge
Office of the General Counsel
U. S. Department of Agriculture
Albuquerque, New Mexico

Dear Sirs;

In answer to your contest of mining claims A-1186, the amended charges in article #5 of the complaint are as follows:

charge (a)

"A valid mineral discovery as required by the mining laws of the United States does not exist within the limits of the Picture Rock nos. 1 through 7 placer mining claims."

(amended charge a)

"to include the Arizona Picture Rock Nos. 1-5, inclusive, as claims which do not have a valid mineral discovery."

answer (a)

Sufficient work and a valid mineral discovery of placer material has been made on each of these claims to justify spending time and money to develop a profitable business.

'3416.2 Discovery: "But one discovery of mineral is required to support a placer location, whether it be 20 acres by an individual, or of 160 acres or less by an association of persons."

Since building stone is recognized by the U. S. Department of Interior under the building stone act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), "extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.", this charge is contradictory to the mining laws of the United States.

charge (b)

"The land embraced within the said claims is nonmineral in character within the meaning of the mining laws."

answer (b)

The term 'mineral' is not merely a synonym for 'metal', but is a comprehensive term including every description of stone and rock deposit whether containing metallic substances or entirely nonmetallic. In the mining law a mineral is any inorganic substance found in nature and having sufficient value apart from the surrounding earth, to be mined, quarried, or extracted for its own sake or its own use.

This charge is contradictory to the mining laws of the United States.

continued on page 2

charge (c)

"The claims do not conform to legal subdivisions as required by 30 U.S.C. 35."

answer (c)

The claims have been relocated to conform to the legal subdivisions.

charge (d)

"The mineral material found within the limits of the Picture Rock Nos. 1-7 claims and the Arizona Picture Rock Nos. 1-5 claims is not a valuable mineral deposit within the meaning of 30 U.S.C. 611."

answer (d)

The meaning of 30 U.S.C. 611: (Section 3 of the act of July 23, 1955 69 Stat. 368, 30 U.S.C. 611), provides in pertinent part as follows; "A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining law.... 'Common varieties' as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value...." 30 U.S.C. 611 intended to remove from operation of the general mining laws (only) common varieties of sand, stone, etc., for it expressly points out that 'common varieties' as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct value.... The 'Common Varieties Act 611' did not expressly or by implication repeal or supersede the earlier building stone act 30 U.S.C. 161. Repeals by implication are not recognized by the lawmakers.

charge (e)

"The land included in the Picture Rock Nos. 1-7 and the Arizona Picture Rock Nos. 1-5 claims is not chiefly valuable for minerals."

answer (e)

'The act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.' 'The act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves in the public land states, subject to location and entry under the general mining laws in the usual manner.' 3400.2 (30 U.S.C. 36). 'Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining law.'

charge (f)

"The Picture Rock Nos. 1-7 and Arizona Picture Rock Nos. 1-5 claims were not located in good faith under the mining laws of the United States."

answer (f)

The definition of 'faith': 'A firm belief in what another states.'
'Good faith' was demonstrated in our labor to develop a valuable mine because of our firm belief in the existing mining laws of the United States and the interpretations of those laws from various authorities.

charge (g)

"The Arizona Picture Rock Nos. 1-5 claims were not located by bona fide locators acting in association and they therefore contain acreage in excess of that allowed by the mining laws of the United States."

answer (g)

No statutory limitation exists at the present time on the age of an otherwise qualified locator. Minors are completely competent to acquire and hold interests in land under state law.
An Interior Department regulation suggesting that minors be at an age of discretion to qualify as locators and that agents might not be able to locate for children beneath such age has no known basis in law.
Under the General Mining Laws of 1872 (3401.2) "Citizens of the United States, including minors who have reached the age of discretion, may make mining locations. Agents may make mining locations for qualified locators." There is no limitation on the number of mining locations that can be made by a qualified locator on Federal lands within Arizona.

SUMMARY:

I believe that when all the facts are weighed in, that 99 per cent of the complaint from the United States Forest Service is based on the meaning of the 'Common Variety Law' 30 U.S.C. 611.

We welcome a chance to put our building stone to the 'Common Variety' test in a mineral hearing (in Phoenix, Arizona if at all possible).

To further clarify the meaning of the 'Common Variety Law' 30 U.S.C. 611 the following is added from some authoritative sources:

From the Senate Committee Report:

"Provide that deposits of common varieties of sand, 'building stone', gravel, pumice, pumicite, and cinders on the public lands, where they are found in widespread abundance, shall be disposed of under the Materials Act of 1947 (61 Stat. 681), rather than under the mining law of 1872."

'Thus we read 30 U.S.C. 611, passed in 1955, as removing from the coverage of the mining laws "common varieties" of building stone, but leaving 30 U.S.C. 161, the 1892 Act, entirely effective as to building stone that has "some property giving it distinct and special value" (expressly excluded under 611).'

From the rulings of the Secretary of the Interior:

"The marketability test is an admirable effort to identify with greater precision and objectivity the factors relevant to a determination that a mineral deposit is "valuable." It is a logical complement to the "prudent man test" which the Secretary has been using to interpret the mining laws since 1894. Under this "prudent man test" in order to qualify as "valuable mineral deposits," the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine...."

United States Congress has made public lands available to people for the purpose of mining valuable mineral deposits. The obvious intent was to reward and encourage the discovery of minerals that are valuable in an economic sense. Minerals which no prudent man will extract because there is no demand for them at a price higher than the costs of extraction and transportation are hardly economically valuable.

From a report of the Senate Interior Committee:

"If a deposit of building stone should be found that has some property giving it distinct and special value, within the meaning of the act, it should be located as a placer claim in accordance with the provision of a statute relating to building-stone entry under the mining laws. (30 USCA 161.)"

The following statement made by Mr. Earl J. Thomas, Acting Director of the Bureau of Land Management in a letter to Hon. James E. Murray, United States Senate, dated August 21, 1958, is indicative of the administrative viewpoint on the matter of common varieties:

"To amplify on the stated definition in the regulations, we would further say that a 'common variety' of material is one that has no special physical or chemical properties which differentiate it from other deposits of such material so as to give it a special or distinct value. You will note that we have stressed the chemical or physical properties of the material itself. This was done to differentiate from geographical location as it is our opinion that location alone would not be a determining factor as to whether a material is a 'common variety' or not.

"Under our definition of the term, limestone, quartzite, or other material valuable for metallurgy, limestone suitable for cement making, stone suitable for cutting into blocks or naturally cleavable into slabs suitable for building,

or silica sand suitable for glass manufacture or foundry use, for example, would not be a 'common variety'. Such materials would remain subject to location under the mining laws upon a valid discovery and would, as in the past, be subject to patent upon proper application."

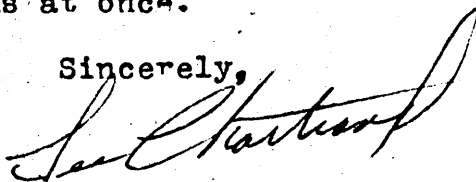
We have discovered a deposit of very high quality building stone that has properties giving it a 'special economic value' way beyond any current market value for ordinary building stone. The deposit is extensive enough to be valuable in quantity, but not abundant enough to be called common. Although the business is still in the very early stages of development, proof of the extremely promising market desires and economic values will be submitted to the mineral hearing, or to whoever may be concerned.

We intend to abide by all the laws and feel that we are 'within the meaning of the mining laws of the United States' as much as humanly possible.

We have discovered a 'valuable mineral' and intend to develop a profitable mine.

If a mineral hearing is not intended to be held in the reasonable future, I suggest that you validate our claims at once.

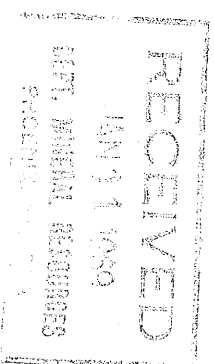
Sincerely,

A handwritten signature in dark ink, appearing to read 'Lee Chartrand', with a stylized flourish at the end.

Lee Chartrand and associates

Department of Mineral Resources
Phoenix, Arizona

Shaw Don, Arizona
January 28, 1969



Dear Mrs Dale,
I hope that I may be able to call upon you
one more for your very valued advice.

On the amended complaint I believe they have
changed me with the common variety law, of which
I plan to let the stone speak for itself in the hearing.

The charge that the claims were not located in
good faith under the mining laws of the U.S.
makes me 'boil' and I don't think I need to answer
that one.

The charges in 5-E and 5-S are not understood
and I would appreciate your clarifying them for me.

I have contacted several large stone buyers and
they want to know the cost and availability. But with the
Forest Service about to run me off, I am hesitant to
commit myself on any orders or prices.

Again, I am caught short of finances and probably will
not have an attorney at the hearing

Sincerely Yours,

Lee Eckhardt

P.S.
I would appreciate your returning
the papers enclosed, Thanks,

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Office of Hearing Examiners
4209 Federal Building
Salt Lake City, Utah 84111

UNITED STATES OF AMERICA,)	CONTEST NO. A-1186
)	
Contestant)	Picture Rock Nos. 1 to 7,
)	incl., placer mining claims
v.)	
)	
LEE CHARTRAND and)	
BARBARA CHARTRAND,)	
)	
Contestees)	

CONTESTANT'S MOTION TO AMEND COMPLAINT

COMES NOW the Contestant and moves that the Complaint in
Contest A-1186 be amended as follows:

1. The style of the Contest should include additional claims
identified as the Arizona Picture Rock Nos. 1-5, inclusive,
placer mining claims.

2. Paragraph 2 should include as additional Contestees
Robert, Lloyd, Donald, Debra and Denise Chartrand whose address
is Star Route No. 5, Show Low, Arizona 85901, and Robert B. Jones
whose address is P. O. Box 5, White River, Arizona 85941. It
should also show that Robert B. Jones is co-locator of only the
Arizona Picture Rock Nos. 1-3, inclusive claims, and that the
above named Chartrands are the children of Lee and Barbara
Chartrand and that all of such children are under the age of
twenty-one.

3. Paragraph 3 should show that the Arizona Picture Rock
Nos. 1-5, inclusive, placer claims are situate in Coconino
County, Arizona, and occupy the following lands:

The SE $\frac{1}{4}$ of Section 34, T. 12 N., R. 14 E.,
G&SRB&M and the E $\frac{1}{2}$, the SE $\frac{1}{4}$ of Section 3 and the
NE $\frac{1}{4}$ of Section 10, T. 11 N., R. 14 E., G&SRB&M.

4. The charge in paragraph 1a is amended to include the Arizona Picture Rock Nos. 1-5, inclusive, as claims which do not have a valid mineral discovery.

5. The charge in paragraph 5b covers both the Picture Rock Nos. 1-7 and the Arizona Picture Rock Nos. 1-5 claims.

6. The charge in paragraph 5c relates only to the Picture Rock Nos. 1-7 claims.

7. The following additional charges are added:

d. The mineral material found within the limits of the Picture Rock Nos. 1-7 claims and the Arizona Picture Rock Nos. 1-5 claims is not a valuable mineral deposit within the meaning of 30 U.S.C. 611.

e. The land included in the Picture Rock Nos. 1-7 and the Arizona Picture Rock Nos. 1-5 claims is not chiefly valuable for minerals.

f. The Picture Rock Nos. 1-7 and Arizona Picture Rock Nos. 1-5 claims were not located in good faith under the mining laws of the United States.

g. The Arizona Picture Rock Nos. 1-5 claims were not located by bona fide locators acting in association and they therefore contain acreage in excess of that allowed by the mining laws of the United States.

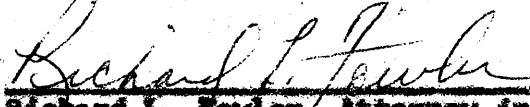
This Motion to Amend the Complaint is based on the following factors:

1. After the complaint was issued on August 25, 1967, the Contestees, Lee and Barbara Chartrand, with their children and Mr. Jones located new placer claims which cover most of the land included in the Picture Rock Nos. 1-7 claims, as well as additional land.

2. That five of the locators of the new claims are the children of Lee and Barbara Chartrand and are from 12 to 17 years in age.

Respectfully submitted this 21st day of January, 1969.

cc: Lee Chartrand
R. B. Jones
John T. Koen


Richard L. Fowler, Attorney in Charge
Office of the General Counsel
U. S. Department of Agriculture
Albuquerque, New Mexico

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX, ARIZONA 85007



February 3, 1969

Mr. Lee Chartrand
Star Route # 5
Show Low, Arizona 85901

Dear Mr. Chartrand:

We are returning herewith the enclosures with your January 28th letter. Thanks for keeping us posted concerning your mining property.

You ask about charges 5E and G. Since we do not find those listed in the Motion to Amend Complaint by the Forest, we surmise your questions pertain to 7e & g. If so "e" is probably a continuation of the charges in "d" - that you do not have a valuable mineral deposit - if they can prove that it follows that "land. . . . claims is not chiefly valuable for minerals".

Charges under "g" would seem to indicate that the forest feels minors are not allowed to file a mining claim, thus the "were not located by bona fide locators acting in association."

We enclose photocopies from American Law of Mining and our Regulations showing that minors do indeed have a valid right to file a mining claim.

I don't blame you for becoming unhappy with the charges that the claims were not located in good faith. But I would advise that you answer that charge as seriously and thoroughly as any other charge. You do have evidence that big stone companies are interested in the stone and I should think that would go a long way toward proving that you did act in good faith in filing the claims and intend to mine and market the material in the future.

We wish you the best of luck, and if you feel we can be of further service, please feel free to call on us.

Sincerely,

Adm. Assistant.

P
Encs.

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX, ARIZONA 85007



Sept. 16, 1968

Mr. Lee Chartrand
Showlow, Arizona 85901

Dear Mr. Chartrand:

Thanks for your letter of September 9 , as per request we have photocopied the Decision on the Coleman case.

We understand that the rock from the claims filed by Coleman was very pretty, 'spectacular' was the word one attorney used, but that he had a difficult time finding a market. The lawyer from here who helped on the case seemed to think the marketing of the rock was the big flaw in their case - after 20 years he had sold but a few tons if I remember correctly and they had built quite a nice home on the property. Apparently it was a choice spot for a residence.

I dug through some of the other decisions of late but found nothing that I felt could help much; I regret to say.

We understand that the application for rehearing before the Supreme Court on behalf of Coleman was denied, but I don't have the papers.

Glad to hear you have an attorney and we wish you the best of luck with your property.

Sincerely,

Adm. Assistant.

P
Enc

C
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P
Y



NOMINATE AND ELECT

FRED O. WILSON

Democrat

**NAVAJO COUNTY
ATTORNEY**

★ QUALIFIED BY EXPERIENCE ★

Shaw-Jones Arizona

September 9, 1968

Joai Jane
Department of Mineral Resources
Phoenix, Arizona

Dear Mrs. Jane,

I would appreciate it if you could send me the court decisions on the 'Coleman?' case. The case has just been won by the Lord Service.

If you have any information there that might help me ~~assist~~ or my recently hired attorney, Mr. Fred Wilson of Hotbrook, that could be used in my case against the Lord Service, I would sincerely appreciate it.

Joe Hotbrook

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX, ARIZONA 85007



November 27, 1967

Mr. Lee Chartrand
Star Route No. 5
Show Low, Arizona 85901

Dear Mr. Chartrand:

Thanks for your letter of November 25th with enclosures.

If you go along with the offer of the Forest Service to grant you a permit until the "final decision, you may find the decision is so far into the future as to be unbelievable. One "common variety" contest is now on appeal to the Supreme Court of the United States - and getting that far has taken many, many months. If you do not accept their permit offer, you are not even allowed to ship the rock that you have stockpiled?

Specifically, I don't know what constructive suggestions we can offer. Neither Mr. Johnson nor myself think it a common variety of stone, but that helps prove nothing.

I can hardly see how applying for patent at this time would be to your advantage - particularly since the validity of your property is questioned by the Forest. The Forest always puts in its protest against patent proceedings as a routine matter when claims are within a forest boundary. It would seem the Bureau of Land Management would await the decision of the hearings before acting upon such an application for patent.

Sorry not to be of more assistance, but do hope the silver lining shows thru the clouds before too long for you.

Sincerely,

Adm. Assistant.

P

11 - 25 - 67

Dear Mrs. Fan,

I am sending along the correspondence to Art, and not knowing which way to go, I am in hopes you may be able to help me or have some ideas.

If I sign up on that special use permit they may postpone the hearing from now on. Also I would have a hard time getting financial help under that setup.

If I could make the 45.55. withdraw the charges & validate my claims or hold the hearing before the spring of 1968 (if not I think I could win) I would save a whole year.

Because of such a short season up there 'early summer' is no

time to start over - out there.

I feel that I have acted within the mining laws and in good faith and the U.S.F.S. has without any justification, interrupted & interfered in my personal business to the extent that I am near financial bankruptcy. If I could afford it I would get an attorney & sue them for meddling.

Would this be a proper time to apply for patent on a portion of the claims?

I hope that you understand my position. Can order for me to continue operations I need financial help, and I can't get that with the Forest Service about to run me off.

Sincerely,
Lee Oakland

Room 4017, Federal Building
517 Gold Avenue, S.W.
Albuquerque, New Mexico 87101

October 23, 1967

Mr. Paul D. Bailey
Chief Hearing Examiner
Bureau of Land Management
U. S. Department of the Interior
2000 Federal Building
Salt Lake City, Utah 84111

Re: Mr. Bailey:

Subject: 2018 Mining Claims - Elipreares
Quintanilla, Leo and Barbara
Contract No. A 1166

On October 16, 1967, we received a copy of Form 1000-1 transmitting this case to your office.

Assistant Regional Forester James C. Smith advised us as follows on September 19, 1967:

"In regard to this matter, Mr. Wilson has advised:

1. The claims were released as the Arizona Picture Book Nos. 1 through 5 plus one mining claim on September 1, 1967, and were recorded in the official records of Coconino County, Arizona on September 20, 1967.
2. The Arizona Picture Book Nos. 1, 2 and 3 are 100 acre claims with 8 locations on each claim, and the Nos. 4 and 5 are 40 acre claims with 7 locations on each claim.
3. The area covered by the 7 Picture Book claims was approximately 140 acres, while the area covered by the 5 Arizona Picture Book claims is approximately 340 acres.

Mr. Wilson has been requested to make an examination, investigation, and report on the Arjuna Picture Book claims as soon as weather conditions and his schedule will permit. However, due to the turbulent weather conditions on the Hawaiian Islands where these claims are located, the field examination may, of necessity, be postponed until late spring or early summer of next year."

This results from the information furnished in the answer filed by contestants.

As soon as possible after receiving Mr. Wilson's supplemental report, a notice to amend the complaint will be filed. We request that a hearing not be scheduled until this is done.

Sincerely yours,

RICHARD L. FOWLER
Richard L. Fowler
Attorney in Charge

cc:
Mr. and Mrs. Lee Chartrand
Forest Service-Lands Division

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE GENERAL COUNSEL

Room 4017, Federal Building

517 Gold Avenue, S.W.

Albuquerque, New Mexico 87101

October 30, 1967

Mr. and Mrs. Lee Chartrand
Star Route No. 5
Show Low, Arizona 85901

Dear Mr. and Mrs. Chartrand:

This refers to your answer dated September 20, 1967, filed in response to the complaint issued August 25; to your letter of April 18, 1967, to Ranger Burfiend; and to a copy of our letter of October 23, 1967, to Chief Hearing Examiner Dent D. Dalby.

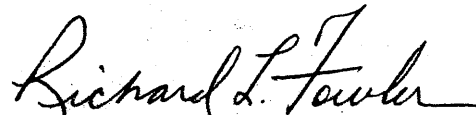
In your answer, you request a hearing as soon as possible. The relocation of your claims on September 1, 1967, prevents an early hearing because of the additional land now included in the claims which makes a reexamination and supplemental report necessary.

We are writing you to suggest a method whereby you might proceed with your plans to work on these claims in the interim until a hearing can be scheduled. It is possible, if the United States successfully contests your claims, that the material for which you located them will be classified as a "common variety" under 30 U.S.C. 611. If this occurs, the rock can be sold by the United States Forest Service under a special use permit. This permit would allow you to mine the rock for a royalty to be determined from an appraisal of its value in place. It would include certain clauses on restoration of the land at the conclusion of the mining if this would be feasible. If you would be interested in going ahead with mining on a tentative basis, Forest Service personnel would make an appraisal; you could then proceed to mine and place in a special account the royalty fee. This account would not be disturbed until a final decision is reached on the validity of your claims. At that time, if you are successful in proving them valid, the money in the account would be returned to you. If your claims are declared null and void, the United States would transfer the money to its general funds. You could then enter into a special use permit and continue operations under it.

The above procedure applies only if your royalty fee is \$1000.00 or less per year.

Please let us know if you want to proceed on the basis suggested.

Sincerely yours,

A handwritten signature in cursive script, reading "Richard L. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

Richard L. Fowler
Attorney in Charge

Shaw Low, Arizona
November 5, 1967

Mr. Richard L. Fowler
Attorney in Charge
Office of the General Counsel
United States Department of Agriculture
Albuquerque, New Mexico

Dear Mr. Fowler:

In response to the copy of the letter sent me on the 26th of October 1967, addressed to the Chief Hearing Examiner Mr. Dalby on October 23, 1967, and to your letter of October 30, 1967, of which you indicate postponement of the hearing date, I do realize that the relocating of the mining claims did cause an increase in the area covered by them, but the original claims are contained within the amended locations and these have been examined previously.

I do not feel that charge (c) "The claims do not conform to legal subdivisions as required by 30 U.S.C. 35." was the basic reason for the contest of mining claims, and does not warrant a delay of "late spring or early summer", which would cause me added financial loss, and cause my starting back to work with the onset of the rainy season, July, a very poor time and another year of assessment work on the claims would be due before September 1st, 1968.

Also in answer to your suggested method of my being able to proceed work under a special use permit, if I submitted to one I would be admitting the mineral was 'common variety'.

If I build up a business and market demanding more than \$1,000.00 paid in one year to a special use permit, the material must be advertised and sold to the highest bidder.

In awaiting the hearing I am losing ideal work and weather conditions, a loss of revenue from the sale of the material I had stock piled during the summer and additional stone that I had planned to quarry. An inconvenience in the fact that my one and only used road leading into the quarry was 'water barred' by pulp wood contractors who were instructed to do so by the Forest Service, prior to my announcement to discontinue my work out there, and the loss of my financial backer in his hearing of rumors and threats coming from Forest Service personnel, to remove me from my mining claims.

How would Friday, March 1st, 1968 in Phoenix, Arizona fit in with your work schedule for a hearing date and location?

Very Best Regards,

Lee Chartrand

Room 4017, Federal Building
517 Gold Avenue, S.W.
Albuquerque, New Mexico 87101

November 13, 1967

Mr. Lee Chartrand
Star Route No. 5
Show Low, Arizona 85901

Dear Mr. Chartrand:

Subject: 2810 Mining Claims - Sitgreaves
Contest No. A 1186

It is not possible for us to agree on a hearing date as suggested in your letter of November 5, 1967. We cannot proceed to a hearing until the evidence on mineral discovery has been examined and evaluated by the mining engineer. The land added by your relocations has not yet been examined. For this reason, we do not have the evidence necessary to show whether or not the claims are valid.

Concerning your statement that you must admit the material is a "common variety" to enter the permit, we were suggesting an arrangement where this would not be necessary and your right to argue that the material is "uncommon" would be preserved by a clause in the permit. Please let us know if you want to consider this as a possible method of reducing any loss you might have due to inability to operate.

Sincerely yours,

RICHARD L. FOWLER

Richard L. Fowler
Attorney in Charge

9-20-67

Dear Mr. Dave,

Thank you very much
for the letter & information.
I'll give you a special
invitation to the hearing.
Am sending along the
correspondence to keep you
up to date.

I don't plan to give
up without a fight and
I'll bet you don't enjoy
a good one now & then.

Joe

JD.

If you have any more information
or advice it is sure welcome.

RECEIVED
SEP 21 1967
U.S. DEPT. OF AGRICULTURE

Show Low, Arizona
September 20, 1967

United States Department of the Interior
Bureau of Land Management
Phoenix, Arizona

and

Mr. Richard L. Fowler
Attorney in Charge
Office of the General Counsel
United States Department of Agriculture
Albuquerque, New Mexico

Dear Sirs;

In answer to your contest of mining claims #All86, the charges in article #5 of the Complaint are as follows:

charge (a.)

"A valid mineral discovery as required by the mining laws of the United States does not exist within the limits of the Picture Rock nos. 1 through 7 placer mining claims."

answer (a.)

Sufficient work and a valid mineral discovery of placer material has been made on each of these claims to justify spending time and money to develop a profitable mine and business.

charge (b.)

"The land embraced within the said claims is nonmineral in character within the meaning of the mining laws."

answer (b.)

The term 'mineral' is not merely a synonym for 'metal', but is a comprehensive term including every description of stone and rock deposit whether containing metallic substances or entirely nonmetallic.

continued on page 2

In the mining law a mineral is any inorganic substance found in nature and having sufficient value apart from the surrounding earth, to be mined, quarried, or extracted for its own sake or its own use.

"The act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land chiefly valuable for building stone within the provisions of said laws."

Therefore, whatever is recognized as a mineral by standard authorities may be located when the mineral is valuable within the meaning of the mining laws.

I cannot find where 30 U.S.C. 161 mining law has been repealed or superseded.

charge (c.)

"The claims do not conform to legal subdivisions as required by 30 U.S.C. 35."

answer (c.)

On September 1st 1967 these claims were amended to conform to the rectangular subdivisions of the land surveys and comply with the Contestants demands, although strict conformity is not required by the mining laws where a placer deposit occurs in the bed of a meandering stream.

The mineral in question is stone with natural seams, suitable for splitting into large slabs or cutting into blocks for building purposes. Because of present demand and commercial value, we have, and with all respects to the mining laws of the United States, since May 1st 1967 spent more than \$5,000.00 in quarrying and preparation for marketing of this building stone.

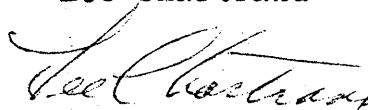
We have 'demonstrated good faith' to develop this business. I have given up a good job, worked and sweated to make this business a success, but because of varying and conflicting charges of the Contestant, I have lost my financial backing and my incentive to continue on.

Since receipt of the Contestant's charges, I have discontinued my work at the quarry and plan to await the hearing.

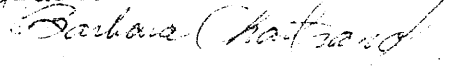
I request that the hearing take place as soon as possible.

Sincerely yours,

Lee Chartrand



Barbara Chartrand



UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

IN REPLY REFER TO

2510

5330

April 14, 1967

CERTIFIED MAIL

Mr. Lee Chartrand
Star Route
Showlow, Arizona 85901

Dear Mr. Chartrand:

Mr. Ruby from this office stopped in to see you sometime ago and I regret that he was unable to contact you at that time. I would like to have the chance to talk with you regarding the claims you have staked for sanstone near Forest Lakes Estates.

I have looked at some of the area and can't see anything that is locatable under the mineral law. If you desire to remove the sanstone it can be done under a special use permit which I would like to discuss with you. I am sure if you would call or write me some date that you could go up to the claims we could both benefit from an on-the-ground discussion.

You can not remove anymore rock under the present set up.

I hope you will be able to come in soon so we can discuss this matter and arrive at a satisfactory solution.

Sincerely yours,

G. H. Burfiend

G. H. Burfiend,
District Ranger



Show Low, Arizona
April 18, 1967

CERTIFIED MAIL

Mr. G. H. Burfiend
District Ranger
Heber Ranger District
Overgaard, Arizona 85933

Dear Mr. Burfiend

In reply to your letter #2810-5330 I would surely welcome a discussion with you regarding the mining claims.

You have probably noticed from the development work I have done that I am very much interested in this beautiful multi-colored sandstone. I have spent many hours of hard work and a lot of money in preparation for the quarrying and marketing of this stone and recently have given notice of resignation to my employer that I plan to go into this business by May 1, 1967.

You have indicated you have knowledge of the mineral laws covering the claims by your statement, "You can not remove anymore rock under the present set up."

Possibly I have overlooked mining laws or regulations that would refuse my mineral rights and claims to this stone.

As I have already made definite plans to start work on these claims by May 1, 1967 I want to know beforehand, what mineral laws you are referring to and who has the authority to classify this stone as common variety or non-mineral.

Sincerely yours,


Lee Chartrand

STATE OF ARIZONA
DEPARTMENT OF MINERAL RESOURCES
MINERAL BUILDING, FAIRGROUNDS
PHOENIX, ARIZONA 85007



September 6, 1967

Mr. Lee F Chartrand
Star Rte 5
Show Low, Arizona

Dear Mr. Chartrand:

Thanks for your September 4th letter with copy of the notice from the Land Office concerning your Picture Rock placer claims.

It would seem the reason the notice refers to 21 years of age is that you cannot bring court action against a minor, even if it is permissible for a minor to file a mining claim.

If you decide to answer the charges on the notice, it would seem the best approach is to prove the stone is Not a Common Variety. If you intend to go to a hearing (which will be held if you answer their charges) it naturally would be best to be represented by competent counsel, but some of the prize pieces of the stone might speak for itself as to its distinctive and unusual features. Would also be helpful to have one or two experts on stone testify if you could secure their help.

With this in mind, we have copied pages of pertinent information from a Decision handed down in June, 1966 from the U. S. Court of Appeals for the 9th Circuit which pertained to "building Stone" claims. The judge found in favor of the locator of the claims and remanded the case to the Secretary of the Interior for further consideration in light of the Court's findings.

You will note on page 12 of the copied material reference to a letter from a gentleman with the Bureau of Land Management, Department of the Interior as long ago as 10-11-57 which explained: "Stone, commercially valuable because of distinct and special properties . . . would not be considered common varieties". BLM is the authority to quote, and this would make 30 USC 161 law applicable instead of the so-called "common variety" or Public Law 167.

Best of luck - and if you think we can be of further service, please feel free to call on us.

Sincerely,

4. So far as known to the contestant, there are no proceedings pending for the acquisition of title to, or an interest in, the above-described lands, except:

The applicant from the United States Forest Service for a validity determination on these claims.

- a. A valid mineral discovery as required by the mining laws of the United States does not exist within the limits of the Picture Rock Nos. 1 through 7 placer mining claims.
- b. The land embraced within the said claims is nonmineral in character within the meaning of the mining law.

5. Contestant charges separately and collectively that:

3
2
30 USC 161
A valid mineral discovery is required by the mining laws of the United States and the applicant from the United States Forest Service for a validity determination on these claims.

30 USC 161
The claims do not conform to legal subdivisions as required by 30 USC 35.

- c. The claims do not conform to legal subdivisions as required by 30 USC 35.

Wrote exactly;

LEE F CHARTRAND
STAR RT 5
SHOW LOW ARIZ
85901

Show Low, Arizona
Sept 4, 1967

Mrs Lois Pare
Dept of Mineral Resources
Phoenix, Arizona

Dear Mrs Pare,

Would you let me know what
you think about these U.S. Forest
Service charges against me? I
am unable to hire an attorney
right now.

I have amended my location
notices to comply to the rectangular
subdivisions on 9-1-67. In
this 'association' planer (amended)
location I've included my children
who are under 21 years old. Is
that permissible?

I have done every thing &
know of to comply to the laws
& regulations.

The Stone is so unusual &
beautiful that it doesn't look
real. The market looks real
promising too.

I would sure appreciate
any help & advise you could
pass my way.

Sincerely

Lee Chartrand