

Mr. William A. Evans
Re: Morning Star (Forcey vs. Molson)
April 4th, 1945

I am attaching to this letter a Memo regarding the general geology and other technical matters, and another Memo regarding the witnesses whom we may wish to call for the trial.

The preliminary maps will follow later.

Yours very truly,

J. M. Colson

GMC/b
Enclosures

Ernest

TECHNICAL NOTES RE MORNING STAR APEX TRESPASS SUIT

(Forcey vs. Molson)

General Geology:--

x The principal country rocks in this district are pre Cambrian granite exposed on the north or footwall side of the prominent Mogul fault; and sediments of the Apache Series (late Cambrian or Silurian) lying on the south or hanging wall side of the fault and consisting mainly of limestone (including marble, dolomite and silicified lime) quartzite and sandstone. Along and near the fault contact there is much fragmented and brecciated material often occupying a crushed and broken zone of substantial width.

point The outcrop of the fault and fault gouge is not always traceable on the surface, but apparently it crosses the east end line of the Pure Gold Claim at a point about 100' north of the southeast corner and *west of line* striking in a northwesterly direction it does not touch the common side line of the Pure Gold and Morning Star Claims.

The Mogul is a normal fault dipping steeply to the south (30° - 60°) and the throw has probably not been accurately determined but is locally reported to be 2500'. The thickness of the formations above described have also not been determined. (*Ernest said 8 to 600'*)

Origin and Character of Scheelite Deposits:--

The ore deposits are of the replacement type. The original source of the heated solutions in which the tungsten was dissolved was doubtless the granite and the Mogul fault together with the subsidiary faults served as channels thru which these solutions came up from the magma to leach out portions of the more soluble

rocks along the hanging wall,--particularly the limestone, and to then deposit the tungsten minerals in and around the vugs and fissures from which the original rock had been dissolved. Often the minerals also impregnated the partially dissolved portions of that rock in such a manner that its original form and texture were still preserved.

Thus it appears that the existing ore bodies or ore shoots generally conform to the shape and size of the dissolved and replaced area of the limestone and that the ore itself (containing scheelite which has the chemical formula Ca WO_4) is distinguished from the mineralized rock only by reason of a higher content of tungsten, for otherwise there is little or no change in its physical or chemical character. There are no well defined or even poorly defined walls to these deposits. There is no regular pattern in which they occur and while some of the ore shoots are elongated it should be noted that the axes lie in different directions, that so far none of them been found to have any great length or depth and that the majority of the shoots are irregular or roughly spherical in shape so that in mining parlance they are termed pockets or kidneys. The location of these ore shoots is erratic and they vary greatly in size and shape.

It is interesting and significant to note that the four U. S. Geologists who examined the showings in April 1943 and February 1944 (Krauskopf, Stopper, Bateman and Erickson) never refer to any veins and describe the deposit of scheelite on the Morning Star (Rivera workings) as being "erratically distributed in an irregular, elongate body of silicified limestone which trends northeast" and they also mention ore lying along two faults which strike at right angles to one another. Likewise they describe the trespass ore body as being "localized in the silicified breccia of the Mogul fault zone".

Because of the manner in which the tungsten minerals were introduced and deposited in this district it is natural that the deposits should be more or less confined to the area consisting of the series of rocks which form the hanging wall of the Mogul fault including quartz, quartzite; breccia, dolomite and silicified limestone. This is true of all of the scheelite deposits which have been found on the Morning Star and Pure Gold claims and also on the Maudina claim over half a mile southeast of them. But this area or zone which is merely the host to the ore deposits, is very irregular in trend, and width and except for the fact that the Mogul fault, and the gouge or sel-vage which accompanies it, forms a foot-wall it has absolutely none of the essential characteristics of a vein, ledge or lode.

Richest ore found here near the fault

At the particular point where the U.S.G.S. Engineers drew their Section A-A thru the trespass ore shoot they showed the formation of quartz and silicified limestone to have a width of about 40' at the surface (somewhat less at depth) and a strike to the northwest and dip of 30° to the southwest, but in Section G-G at the Rivera workings, only 250' farther south the same formation is shown as vertical with a width of 75' and a strike to the northeast while here the narrow streak of enriched material although striking also ^{to} the northeast dips 70° to the southeast. The plan maps of other workings show similar irregularity.

The entire areas of the rocks in which commercial ore occurs can hardly be classed as a vein, but merely as a host to the ore bodies or ore shoots such as those which are differentiated in the U.S.G.S. drawings. None the less this mineralized zone seems to carry some small quantities of scheelite and at one place in Section A-A, there is a point marked as containing an average of 0.1% WO_3 . Actually no

material containing less than 0.5% WO_3 could have been mined with profit even when the Government was paying the highest premium price of \$30.00 per unit of WO_3 while today there is no pay ore which does not contain a minimum of 0.7 to 0.8% WO_3 , and such material has always been found in small irregular pockets. To the best of my knowledge no one has ever attempted to compute the average tenor of the quartz, breccia, quartzite and silicified limestone in which the ore shoots occur, but these formations have been quite thoroughly prospected on the surface and in various underground workings with the ultra violet light (which will detect minute quantities of scheelite) and outside of the erratic occurrences of intensive mineralization I believe it safe to assume that its average content in WO_3 could only be described as a "trace".

Eldred D. Wilson, Geologist for the Arizona Bureau of Mines examined the showings in 1941, before the trespass ore shoot had been discovered. He does apply the term "vein" to the silicified zone in the limestone at the location of the Rivera workings and elsewhere but goes on to say that it contains small "irregular disseminations of scheelite" which constitute the ore shoots.

Peter Huey
I am told that a Mr. Huey, also connected with the Arizona Bureau of Mines has also described the ore deposits as scattered pockets occurring in a broad zone of general but feeble mineralization.

It is my opinion that not a single one of these shoots of commercial ore has been proved to have any of the legal or technical characteristics of a vein, ledge or lode and therefore there would

X
seem to be no basis for claiming that their outcrops represented such an apex as would give its owner extra-lateral rights beyond a common side line with an adjacent claim. No showing which meets or even approaches these requirements can now be seen at or near the point of trespass, but the defendant has built up a strong case from photographs, maps and an elaborate model to support, ^{which} while they will probably offer the testimony of those who were on the ground at the time that the trespass ore was discovered and mined.

Re Defendant's Exhibits and Anticipated Testimony:--

Concerning the first three exhibits comment will have to be made by Mr. Forcey or others. Apparently the defendants concede that they have mined 1072 tons of extra-lateral ore and Forcey claims that some of this was of much higher grade than shown by the defendant's assays, but I fear that he may lack convincing proof of this contention.

As to Exhibits #4,5,6,7,8 and 9 we have stipulated that in so far as these reflect the surveys by Stevens they will be accepted as accurate, but the geology, structure and location of the vein and walls, as shown in these exhibits and in their model are all open to criticism and correction or contradiction by our witnesses.

No. 10 is presumably the report and map of Bateman and Erickson, dated February 14th, 1944 and it should be noted that whereas the defendant twice mentions that this shows the "vein" yet actually that term is nowhere used by the authors nor do they refer to the Mogul fault in the vertical Section A-A, but merely to a "crushed zone."

In the plan map the common side-line is not shown, but I have drawn it in on my copy as located from Stevens' surveys. In the vertical Section A-A the scheelite mineralization was drawn down less than 20' below the surface, and was not connected with the point of feeble mineralization (0.1% WO_3) shown at the southwest face of the adit, nor do they state that the ore in the trespass shoot was connected with ore in the Morning Star open cut lying to the east. Forcey claims that the rock between these showings was mineralized with less than 0.1% WO_3 .

Subsequent work did prove that some ore extended to a maximum depth of about 35' below the surface in the trespass pit, but at this depth it apparently pinched out and we shall try to prove that it did not continue to the adit, nor to the sub-level as claimed by the defendant. I have good hopes that we can convince the Court that the U.S.G.S. Report and maps do not conform or in any way support the claims of the defendant.

As to their witnesses I understand that Ewing was pretty constantly in charge on the ground for Molson while all of this work was in progress, and therefore his statements of fact will no doubt carry weight unless they can be satisfactorily refuted. However, I believe that Ewing has no standing as an Engineer and any technical or expert testimony that he might offer should be subject to challenge. The same comment will apply to any testimony that may be given by Molson.

Pennybaker will apparently be the principal and perhaps the only expert technical witness. We know he will assume responsibility for the geology shown in the exhibits and that he will claim that the trespass ore pocket is a true vein and has been followed down at this

*Older
J. R. F. C.*

point from an apex, which he saw when he first examined the property.

Great weight will doubtless attach to Pennybaker's opinion as to the nature of the ore deposit, etc., since this has been based on personal observation, lamp tests and sampling and we must if possible, present similar evidence in contradiction to his testimony.

*Smuggled
was his*

Pennybaker contends that the trespass vein outcrop continues to the northwest on the Pure Gold claim, but apparently the ore pinched out in the two open cuts before it reached the side line and since these workings have been largely allowed to cave, it does not seem that the Pure Gold people intend to reopen or extend them.

The reported logs of the two drill holes which are now being sunk still farther to the west seem to confirm the claims of the defendant respecting the extension of a vein in that direction but they may have struck another ore pocket and in this area the ore would have to be followed a long distance downward before it would cross the common side line.

Since the Mogul fault strikes to the northwest it is obvious that any shoots or veins located near to or directly along its hanging wall will be farther and farther away from the common side line as one proceeds in that direction and even granting that they might dip across the side line, the depth of such intersection would be progressively greater. No pay ore has been found on either of these claims at a depth of more than 100' below the surface, and very little ore at more than half that depth, so that I cannot anticipate that the question of extra-lateral rights will have any

importance except in respect to the trespass ore body and if we can prove that at that point the apex of the ore body,--whether it be a vein or pocket,--actually split the common side line it seems to me that the Morning Star owners will be entitled to collect for all or almost all of the extra-lateral ore which has been mined to date, or which might be mined at greater depth along that section of the side line. In addition I think that we shall have a valid claim for substantial damage to the surface of the property where no trespass is authorized under any circumstances by the provisions of the Apex Law.

Emc

SUGGESTED WITNESSES FOR MORNING STAR
TO BE CALLED AT THE TRIAL ON MAY 7TH, 1945.

(1) L. M. Forcey, Oracle, Arizona

Can testify as to conditions on surface of claim before and subsequent to date of trespass and to some assays of ore, drill cores and other material and tests by lamp. Will also identify records of production, shipments, etc.

(2) L. T. Derwin, Registered Mining Engineer
Oracle, Arizona

Has visited mine on same occasions that I did and would testify that in his opinion the ore occurred in pockets and not in any regular vein. (May not be available for trial).

(3) H. G. Henderson, ^{Miner Engineer} experienced mining and oil operator.
P. O. Box 112, Fullerton, California

Was associated with Forcey et al in development of property and very familiar with all conditions until a few months ago. Will testify that all ore was found in scattered pockets, that trespass ore shoot was not a continuous vein as shown by defendants and that pay ore did not occur at several of the points where they claim to have found it but that there was some ore at the surface extending across the common side line, presumably at points where Molson and Pennybaker did not sample. Henderson should make a very good witness and seems to have a very complete and accurate recollection of facts.

(4) G. M. Colvocoresses.

Will testify that in his opinion ore occurs in pockets and that there is no true vein at point of trespass, but elongated lense similar to other lenses worked by Pure Gold farther to the northwest and by the Morning Star in open cut to the southwest and in the Rivera pit and trench and perhaps also in shaft at top of ridge. Will develop theory that wide area of crushed and shattered limestone in hanging wall of Mogul Fault is mineralized with scheelite to a very small extent (to be confirmed by Forcey, Henderson and others and by reference to U.S.G.S. bulletin.) In this large zone of limestone are found areas of more intensive silicification with quartz and quartzite and often higher values in scheelite up to 2 or 2.5%. The occurrence of these ore shoots is erratic and their shape irregular but that in the case of the trespass ore-body the mineralized zone did occur as an elongated lense with long axis northwest,-southwest and crossing the common side line between the Pure Gold and Morning Star claim and dipping with the general trend of the formation toward the southwest.

The width of this ore zone was erratic but at a point about 300 ft. from the east corner it attained a maximum width of some 40 ft. This outcrop of ore originally straddled the common side line as will be shown on the map and for a certain length, which represented the section from which the greater portion of the trespass or extra-lateral ore was mined below the apex, which, where found on the Morning Star, was at all times higher in elevation than the corresponding portion of the outcrop on the Pure Gold.

Therefore and because the Morning Star is the senior location it follows that in the event that the Court should decide that this trespass deposit is a true vein and entitled to extra-lateral rights, those rights can only attach to that portion of the alleged vein which lies west of the point where its hanging wall outcrop crosses the common side line (marked (X) on the map.).

The above testimony will be partly substantiated by maps and photos, but I consider it essential that we should have at least one other qualified expert witness whose testimony would in general corroborate my own and who could spend one or two days with me on the property using the lamp and taking samples and measurements to check and amplify the information already obtained.

As such a witness I would tentatively suggest Arthur Flagg, Mining Engineer of Phoenix, who has had much experience with tungsten deposits during the past 25 years, and recently did a lot of work for the United States Government.

Other witnesses for consideration:--

Mohney, once foreman at Morning Star and now with Eagle-Fischer Company in Tucson, who would testify,--according to Forcey and Henderson,-- that trespass deposit and all other deposits on these two claims were pockets and not veins.

R. H. Murray of Tiger, Arizona, once night foreman for Pure Gold Company who will give similar testimony to Mohney, according to Forcey.

L. H. Murray, - helped to camp at the site of the deposit

William Ward of Tiger, Arizona, once general foreman for Pure Gold who will agree with Mohney and Murray, according to Forcey.

Phil
Rivers, formerly lessee on Morning Star Claim and then foreman for Company operations.--a practical miner with wide experience in mining tungsten in this district. Henderson and Forcey believe that he would corroborate Colvocoresses, Henderson, Forcey, Mohney, Ward and Murray and could testify in detail to the extension of the apex of the trespass ore shoot southward across the common side line.

Done

March 12th, 1945

Mr. William A. Evans
c/o Ellinwood & Ross, Attorneys
Title & Trust Building
Phoenix, Arizona

Re: Morning Star

Dear Mr. Evans:

Let me quote from the Answer of the Defendant in the case of Forcey versus Molson as follows:

"That located within said Pure Gold Mining Claim and traversing the same easterly and westerly, and crossing the east end-line of said claim, is what is known as the Mogul Fault, containing valuable minerals, and also situated on said claim are numbers of veins, lodes or ledges containing valuable minerals traversing the same easterly and westerly and through and beyond its east end-line; that located within said Pure Gold Mining Claim and immediately south of the said Mogul Fault is the apex or top of a vein lode or ledge containing valuable minerals, particularly scheelite or tungsten, which said apex is located within said Pure Gold Claim in a northwest-southeast direction and intersects the common side-line of the Morning Star and Pure Gold Claims at a point approximately 217 ft. west of the southeast corner of the Pure Gold Mining Claim; that the course downward of said vein, lode or ledge from said apex within said Pure Gold Mining Claim lies in a southwesterly direction and said vein, lode or ledge in its course downward extends through the common side-line of said Pure Gold and Morning Star Mining Claims and into said Morning Star Mining Claim; that in its course downward said vein, lode or ledge is continuous and lies between clearly defined hanging and foot walls. The defendant has mined ore containing valuable minerals, particularly tungsten, from said vein, lode or ledge in said Pure Gold Mining Claims and in the course of these mining operations has followed the said vein, lode or ledge in its course downward beyond the common side-line of said mining claims and into the said Morning Star Mining Claim."

In studying the physical conditions at the mine I have found it very difficult to identify any showing of ore which conforms even approximately to the description given above.

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Re: Morning Star

At a point along the common side-line 217 feet west of the southeast corner of the Pure Gold Claim, which is also the northeast corner of the Morning Star, there is no sign of any outcrop on the surface, nor has any mining work been done underground here nor in its immediate vicinity.

The open pit or glory hole from which ore has been mined by the Pure Gold Company breaks down the surface along the common side-line at a point 250 feet west of the above mentioned corner and this break continues farther west for a distance of 82 feet. Since a great deal of rock has caved or been broken down into this pit the bottom of same is filled with debris or large boulders and the width on the surface is in places over 40 feet. Therefore, it is impossible to determine whether any vein or ore showing once outcropped in the area of the pit, and I could find no extensions of any such vein as is described by the defendant at either end of the pit nor along such portions of the walls as are now visible.

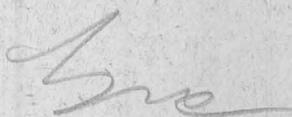
Since the Pure Gold operators are technically trespassers on the Morning Star property until they succeed in proving their extra-lateral rights it would seem proper that they should be compelled to make their Answer to the Complaint far more complete and specific and to accurately describe the location of the alleged vein, mentioning the exact point where it crosses the common side-line, also the length to which it can be traced on the surface, the depth to which it has been followed underground and giving the width in feet and the strike and dip in degrees and minutes.

Since all or nearly all of this information should be contained in the survey and assay map which the Pure Gold people have recently completed, I think that you may wish to ask to have a copy of this map and other similar data furnished to you at once so that we can know exactly the basis of the claim for extra-lateral rights and give the same proper consideration in advance of the trial.

May I suggest that you take this matter up with Mr. Fennimore at your early convenience. An extra copy of this letter is enclosed in case you wish to send it to Judge Darnell.

Yours very truly,

GMC/b
Enclosure.



May 14, 1946

Mr. William A. Evans
C/o Ellinwood & Ross
807 Title & Trust Building
Phoenix, Arizona

RE: Morning Star Apex Suit
(Forcey vs. Molson)

Dear Bill:

Thank you for sending me the copies of Judge Faires letter of May 8 and your letter of May 9.

I was out of town when these arrived and have had no previous opportunity to comment but I need hardly say that the decision disappointed and grieved me a great deal. I rather expected that the judge would decide some points in favor of our opponent, but apparently he followed their theories all the way through and did not consider that it was necessary for a true vein to have a hanging wall as well as a footwall.

Of course we were much handicaped by the fact that there was no competent technical testimony regarding the conditions of the out-crop of the vein at the time when it was first discovered and evidently the judge was not willing to agree with the conclusions which Flagg and I felt justified in reaching on the basis of what we saw at a later time.

I was surprised that no mention was made of the split-apex which we certainly tried hard enough to prove but evidently our efforts were not good enough.

I want to say that I do not believe that you as attorney could possibly have made any sounder case on the basis of the evidence which was available, and it will be interesting to note the comments of the court of which I shall hope to receive a copy.

The last paragraph of the Judge's letter to Fennemore is somewhat cryptic and since I am not familiar with the Iron Cap case, I cannot quite understand whether in the present decision he is depicting a precedent by *departing from* "swimming against the current" or whether he merely refers to the technical and sometimes contradictory testimony. Apparently Judge Faires assumes that the case will be taken to the Supreme Court and should this be done, I certainly hope that the decision of the law court will be reversed on some of the essential points.

Law

Yours very sincerely,

Green

GMC: IW

OFFICERS CLUB
Headquarters 668 A. A. F. Base Unit
(4th Operational Training Unit)
Ferrying Division
A. T. C.
Brownsville, Texas

Am detailed O.D. today
which is a good time to
write to The General
5 Nov. 1944

Dear General:

Your swell letter to G. Mother was forwarded to me here along with the good picture of yourself and the memorial to Uncle Lambert. It is impossible to express how much your never ending remembrance means and it gives one a big lump in the throat when one realizes what real friendship can mean through the years. Never has a friendship deserved more to be called a tried and true one than yours for Uncle Lambert and G. Mother has proven thru all these years. I shall never forget that.

G. Mother and I were together four months while stationed at Great Falls, Montana, but she has now returned to the Long Beach, Washington home where she seems very happy among old friends and she is also writing a new book. She is well and vigorous as ever and it is wonderful to see her so happy and active.

I am now going through A.T.C. Pursuit school here and plenty happy to get a chance to fly some real fighter "PeeShooters". We fly P40's, P51's, P47's, P59's and P63's here and they are all plenty sweet ships I think. Upon graduation we will be ferrying them around the country and to Alaska. I am very much in hopes of a ferrying mission down your way and will be sure to notify you sir, if I have that good fortune. Flying these "PeeShooters" has been my great ambition, and now damn it I want to do some shooting with one of them.

Appreciating always all your kindness to G. Mother and Uncle Lambert, I only hope that I may do as much for you and your family some day.

Good Luck and God Bless You

"Woody"

To: Gen. Geo. H. Tooms
The Infantry School
Fort Benning, Georgia

Lambert A. Wood
G-2061573
SNI, Lt. A.C.

LAW OFFICES OF
ELLINWOOD & ROSS
807 TITLE & TRUST BUILDING
PHOENIX, ARIZONA

March 27, 1945.

Mr. George R. Darnell,
Darnell & Robertson,
Valley National Building,
Tucson, Arizona.

Re: Forcey v. Molson

Dear Mr. Darnell:

Since returning from our conference in Tucson last Friday, I have done some further research regarding the various aspects of the above case, and I am herewith submitting my views on some of the questions involved with the thought they will help to crystallize the issues and aid in preparation for trial.

(1) Effect of the Absence of Any Proof by Molson that the Alleged Vein Crosses Either End Line of the Pure Gold Claim.

At our conference, Mr. Molson submitted maps, diagrams, cross-sections and a model depicting an alleged vein extending from the open cut just below the ore bin on the Morning Star claim on a northeasterly course through the trespass ore body adjacent to the common side line, and thence on the same general course to some smaller excavations a short distance beyond the trespass ore body. The vein as so depicted crosses the common side line between the Pure Gold and Morning Star claims approximately 217 feet from the southeast corner of the Pure Gold claim.

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Mr. McFall raised the point that unless a vein crosses at least one end line on its course, extralateral rights do not attach to it, and cited in support of this proposition Bourne v. Federal Mining & Smelting Co., 243 Fed. 466, and Catron v. Old, 48 P. 687, 23 Colo. 433, which, as far as I am able to ascertain, are the only authorities which might be relied upon to support the proposition.

In considering this theory and the above cases, it is advisable to keep the following principles in mind:

(a) In general, where the apex of a vein lies within the surface lines of a lode mining claim, the owner of the claim may follow the vein to any depth beyond his vertical side lines within the limits of a projection of the vertical end lines. Del Monte M. & M. Co. v. Last Chance M. & M. Co., 43 L. Ed. 72.

(b) When by mistake a claim is located across rather than along a discovery vein, the side lines become the end lines for the purpose of determining the extralateral rights of the owner of the claim.

Walrath v. Champion Mining Co.,
43 L. Ed. 170;

Conkling Mining Co. v. Silver King
Coalition Mines Co.,
230 P. 553.

(c) The end lines established for the original discovery vein constitute the end lines of all other veins found within the surface boundaries of the claim.

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Walrath v. Champion Mining Co.,
supra;

Conkling Mining Co. v. Silver King
Coalition Mines Co., supra.

In its opinion in the Bourne case, the court states the decision depended on the "crucial question" of whether or not the vein intersected the northwesterly end line of the claim, stating that admittedly the owner could not pursue the lode beyond the vertical plane of the southwesterly side line unless the apex intersected at least one of the end lines. Just why this admission was made is not entirely clear without a far more complete understanding of the facts than can be gained from a reading of the opinion. However, the probable explanation for the admission can be gained from the opinion. The course of the lode involved crossed the southwesterly side line of the claim, proceeding thence northwesterly and leaving the claim in the vicinity of the northwest corner, the issue being as to whether it crossed the northeasterly side line or the northwesterly end line. If this lode was the original discovery vein (and there is nothing in the opinion to indicate otherwise), then the reason for the admission is evident. In such event, if the vein crossed the northeasterly side line on its course, then the side lines became the end lines and the extralateral rights of the owner of the claim would extend northwesterly on the dip of the lode rather than southwesterly on the dip into the claim of the opposite party, which latter situation would be the case if the course of the vein passed through the northwesterly end line.

That this was the reason for the admission is borne out by the cases cited by the court in support of its statement, namely Flagstaff S. Mining Co. v. Tarbet, 98 U. S. 463, 25 L. Ed. 253, and Del Monte M. & M. Co. v. Last Chance M. & N. Co., 43 L. Ed. 72. These cases are the leading authority

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for the proposition that if a location is made across the course of a vein, the side lines become end lines for the purpose of defining extralateral rights.

Also, the Del Monte case indicates that a discovery vein need not cross an end line on its course in order to give the owner of the claim extralateral rights beyond the side lines, provided the course of the vein does not cross both side lines. The court in its opinion in the Del Monte case said:

"This places a limit on the length of the vein beyond which he may not go, but it does not say that he shall not go outside the vertical side lines unless the vein in its course reaches the vertical planes of the end lines. Nowhere is it said that he must have a vein which either on or below the surface extends from end line to end line in order to pursue that vein in its dip outside the vertical side lines. Naming limits beyond which a grant does not go is not equivalent to saying that nothing is granted which does not extend to those limits. The locator is given a right to pursue any vein, whose apex is within his surface limits, on its dip outside the vertical side lines, but may not in such pursuit go beyond the vertical end lines. And this is all that the statute provides. * * * "

Also, the court in the Del Monte case quoted with approval from the decision in Tyler Mining Co. v. Last Chance Mining Co. (Ida.) as follows:

" * * * What reason under the law can be assigned why these rights shall not apply when his location is such that his ledge passes through it in some other way than from end to end? The law does not say that his ledge

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must run from end to end, but he is granted this right of following 'all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of his surface lines'. Upon the fact that an apex is within his surface lines, all his underground rights are based. When, then, he owns an apex, whether it extends through the entire or through but a part of its location, it should follow that he owns an equal length of the ledge to its utmost depth.
* * * "

In view of the foregoing, it is more than probable that the admission in the Bourne case of the necessity that the lode cross the end line arose over the issues as to the direction of the extralateral right involved rather than from any question as to the existence of an extralateral right.

The Catron case was an early Colorado decision holding that a vein which did not cross either end line and did not run nearly parallel to the side line carried no extralateral rights. The decision was based on an erroneous interpretation of King v. Amy & S. Consol. Mining Co., 152 U. S. 222, as holding that where a vein crosses both side lines of a claim no extralateral rights exist and, in view of this, carries little weight. The Catron case was definitely overruled by the much later Rico-Argentine Mining Co. v. Rico Consol. Mining Co., 223 P. 31, case. The Rico case is very similar in many respects to Forcey v. Molson, including the contention that a vein crossing one side line only and not crossing either end line carried no extralateral rights. With respect to this contention the court said:

"The case of Del Monte M. & M. Co. v. Last Chance M. & M. Co., 171 U. S. 55, 18 Sup. Ct. 895, 43 L. Ed. 72, we think, compels us to conclude that extralateral rights are conferred where the discovery vein crosses only one side line, where it crosses one end line and one side line, where

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it crosses the same side line twice, and where it crosses neither end line; that the only exception is where it crosses both side lines. In the case of Del Monte M. & M. Co. v. New York & L. C. Min. Co. (C. C.) 66 Fed. 212, Judge Hallett held that such rights were conferred, even though the lode did not come to either end line. The decision in Tyler M. Co. v. Last Chance M. Co. (C. C.) 71 Fed. 848, is cited with approval in the Del Monte v. Last Chance Case, supra, and is in accord with the decision of Judge Hallett in the Del Monte New York Case."

In view of the foregoing, I do not consider that failure to prove the alleged vein crosses an end line of the Pure Gold claim will affect the extralateral rights attributable to that portion of the apex within the Pure Gold boundaries.

Even if the alleged vein extended on its course across the northerly side line of the Pure Gold claim, it would not mean that the side lines became the end lines for the purpose of extralateral rights on the vein unless it could be established that this was the original discovery vein or that the original discovery vein crossed both side lines of the claim. It might be worth while to examine the patent application with this in mind, but I doubt whether it will be possible to develop any factual data to support such a theory for the case.

(2) Molson's Contention as to the Existence of a Vein.

At our conference in Tucson Mr. Pennybaker stated he had traced on the surface the foot wall and hanging wall contacts of the vein as indicated on his maps, and that a definite contact could be identified on the surface, distinguishing the alleged vein material from the wall material. He also stated that the hanging wall and foot wall contacts were

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disclosed by the underground workings and that the vein material as shown on his maps was definitely mineralized, whereas the material in the hanging wall and foot wall was barren. Mr. Pennybaker stated that his conclusions in this respect were based on lamping and assays of both the vein material and the wall material and his testimony will no doubt be corroborated by assay records and the testimony of Messrs. Molson and Ewing.

Evidence along the lines outlined above will be sufficient to establish a vein or lode with respect to which extralateral rights will attach and the theory upon which Molson has prepared his case is well supported by the authorities, even though it is shown that commercial ore is confined to small pockets in the alleged vein.

In the case of Rico-Argentine Mining Co. v. Rico Consol. Mining Co., supra, the contention was made that the ore bodies involved were merely replacement deposits in a lime bed and that the lime bed did not constitute a lode or vein. However, in response to this contention, the court stated:

"We also think the court erred in its finding that there was no continuous vein from the trespass stope up to defendants' alleged Black Hawk vein, but only replacement deposits of ore and iron, and therefore that No. 4 lime bed was not a lode. We are of the opinion that the newly discovered evidence shows the contrary. Lime beds replaced with minerals, fractured and faulted, as indicated by the evidence in this case, constitute a lode as defined in the Eureka Case, 8 Fed. Cas. 819, No. 4,548, 4 Saw. 302; Utah Cons. M. Co. v. Apex M. Co., 285 Fed. 249; also U. S. Mining Co. v. Lawson, 134 Fed. 769, 67 C. C. A. 587. * * *"

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"And the court then held that, whatever may have been the mineralizing process, the alteration and mineralization of the limestone were so general and extensive as to convert it into a single broad vein or lode. In the Keeley v. Ophir Hill Case, Judge Marshall observed:

"Nor is the fact that the beds are but slightly mineralized between the ore shoots of prime importance. The character of the deposit being once established, and the beds, constituting the same, persisting, slight evidence of mineralization between valuable ore shoots is sufficient to prove continuity of vein."

In Utah Cons. M. Co. v. Apex M. Co., 285 Fed. 249, there was involved a limestone bed lying between quartzite walls and having an average thickness of 250 feet. The bed extended in an east and west course for about 2,000 feet and had a dip to the north of thirty degrees. The bed was associated with an east and west fissure, known as the Leadville fissure, which was the probable channel through which the mineralizing solution reached the limestone bed. The parties conceded the limestone bed was a lode, but appellee contended it had been cut off at the 900 foot level by a porphyry dike. Appellee's contention was sustained, but the following is quoted from the opinion:

"From what has been said it is obvious that the continuity of appellant's lode downward from the ninth level is the contested point. Continuity of a lode does not depend on the mineral deposits being in contact throughout or uninterrupted. They are usually found here and there apart from each other and variable in volume and richness. But as a rule ore deposits in a vein or lode are interrelated mineralogically, showing a general like

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condition throughout the one mass of rock, where it is mineralized and where it is not, as to its reciprocity to mineralizing processes, though the extent of their operation may be greater at one place than at another. Fissures or seams through which the mineralizing solutions have passed, sometimes so narrow and tight that it is difficult to discover and follow them, frequently lead from one deposit to another not far away. That, we understand, is the prevailing condition in bedded formation of the large proportions we have here, when transformed into mineral lodes. The statute deals with 'any mineral vein, lode, or ledge'; and rock, whether brecciated or bedded, is not a vein or lode within the statute, even when found between well-defined walls, unless it has been mineralized. Appellant's claim to the ore under appellee's ground is not based on the fact alone that it is found in the limestone bed. That is admitted, as to the greater part of the ore. The point in dispute is whether the limestone bed, conceded to be a lode from its apex down to appellant's ninth level, continues on down as a mineral lode for more than a quarter mile to the ore under appellee's ground, --was its continuity terminated at the ninth level by the porphyry dyke or this barren limestone below it."

In United States Min. Co. v. Lawson, 134 Fed. 769, the same limestone bed as was involved in the Utah Cons. Mining Co. case was under consideration. The court, in holding the limestone bed to be a lode or vein, said:

"A careful examination and consideration of the evidence clearly convinces us that the stratum of limestone constitutes a single broad vein or lode of mineral bearing rock extending from the quartzite on one side to the quartzite on the other. The limestone has been profoundly broken, altered, and mineralized, and has thereby obtained an individuality which, apart from other differences,

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clearly distinguishes it from the neighboring rock. There is a local absence of ore in places, a continuous occurrence of it in others, and a seeming local occurrence of it in still others, but the ore bodies are not separated, one from another, by any defined boundaries. As in Eureka Consolidated Mining Co. v. Richmond Mining Co., 8 Fed. Cas. 819, 825 (No. 4,548), they are parts of one greater deposit, which permeates, in a greater or less degree, with occasional intervening spaces of barren rock, the whole mass of limestone. As shown by extensive exploration and actual mining, the mineralization has been so general that its only defined limits are the quartzite walls which bound the limestone, and within it one may reasonably expect to encounter ore by driving or cross-cutting in any direction.

"In addition to the many small fissures which exist only in the limestone and extend in every direction, other ore-bearing fissures of approximately a northerly and southerly direction are found in the quartzite, and it is the contention of the defendants that these extend through the limestone, that its mineralization is due to them and occurred at the same time and in the same manner as did the deposition of the ore in them, and that the ore bodies in the limestone are lateral continuations or appendages of these cross-fissure veins. Of this it is sufficient to say that, whatever may have been the mineralizing process, the alteration and mineralization of the limestone were so general and extensive as to convert it into a single broad vein or lode within which the cross-fissure veins are without defined boundaries, and so far lose their identity that they cannot be distinguished from the larger ore bodies therein. * * * "

In Butte & B. Min. Co. v. Societe Anonyme
Des Mines, 58 P. 111, (Mont.) the court said:

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en.

" * * * The miner may encounter what he terms a 'fault fissure', - a rupture in the rocks accompanied by a relative movement of the walls. During the readjustment of the country on either side of the fissure, masses of these walls are torn off, and, falling into the fissure, become vein filling, termed by geologists 'conglomerate', 'breccia', and 'horse matter', as the fragments or masses of unbroken country rock found between the walls may indicate. It can be readily seen that if the fissure is found in a slate country, with intrusions of granite, the filling may consist of slate or granite, or both, while there may even be slate on one wall and granite on the other, or similar or dissimilar formations or fillings on either or the two. The mineralization of the vein - the deposition of the previous metal - occurs subsequent to the rupture only in such places between the walls as form channels or are pervious to mineral solution. * * *

"In this discussion, however, we do not mean to exclude the need of a continuity sufficient to preserve identity. The application of the rule of identity of vein should always be made so as to require the miner to trace his lode continuously, if he depart beyond his extended side lines. There must always be in any lode that 'zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock'. Eureka Consol. Min. Co. v. Richmond Min. Co., 4 Sawy. 302, Fed. Cas. No. 4,548. Nevertheless there may be an identical vein, although ore is found at considerable intervals and in small quantities, if the boundaries constituting the fissure are well defined. * * * "

(3) Forcey's Theory of the Case.

It will necessarily be the contention of the plaintiff that there does not exist a vein such as depicted by Molson, but instead that mineralization is unequally

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but generally disseminated throughout the entire limestone formation adjacent to the common sideline, with localized concentrations in pockets of ore of commercial value.

In Hyman v. Wheeler, 29 F. 347, there was involved a controversy somewhat similar to that here presented. In discussing the contention made by the claimant of extra-lateral rights, the court said:

" * * * To illustrate that matter, it may be said that, with ore in mass and position in the body of a mountain, no other fact is required to prove the existence of a lode of the dimensions of the ore. As far as it prevails, the ore is a lode, whatever its form or structure may be, and it is not at all necessary to decide any question of fissures, contacts, selvages, slickensides, or other marks of distinction, in order to establish its character. As was said in another case in this court:

" 'A body of mineral or mineral-bearing rock, in the general mass of the mountain, so far as it may continue unbroken, and without interruption, may be regarded as a lode, whatever the boundaries may be. In the existence of such body, and to the extent of it, boundaries are implied.'

"If, therefore, we look only to the body of ore developed in the Emma location, the existence of which is not denied, and assume it to be of the form and extent developed in the works, there is no difficulty in recognizing it as a lode. Whether it is in the form of a broken mass of blue and brown lime, between regular walls of the same rocks, or a part of such strata in solid formation, mineralized by replacement of some of their constituents with valuable metals, the result is the same, and the name

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which science may apply to it is of no importance. An impregnation, to the extent to which it may be traced as a body of ore, is as fully within the broad terms of the act of congress as any other form of deposit. * * * "

And in discussing the contention of the opposite party that no vein existed in fact, the court said:

"If, as contended by defendants, the ore of that mountain is distributed throughout the blue and brown limestones somewhat unequally, but nevertheless generally, and the occurrence of rich ore in the Emma works is fortuitous and accidental, other considerations arise of which it is not necessary to speak at length. In that case the entire body of blue and brown limestone is taken to be ore-bearing rock, and the plaintiff can assert no claim to it outside his own location. * * * "

Again in Cheesman v. Shreeve, 40 F. 787, the court, in discussing issues similar to those involved in the present case, said:

" * * * It is claimed, for instance, on the one side, that, while on the plane or line where the Champion tunnels run there may be found mineral matter permeating more or less the rock formation, and that here and there ore deposits more or less valuable may have been found, yet that such deposits of ore were only found in vugs, or, as some of the witnesses terms it, 'bugs', in small quantities, lying in no general direction, widely separated, and found in the excavations only after driving the tunnel for considerable distances through hard quartzite rock; and that these vugs of ore lay in detached cavities, more or less like a trough, wholly surrounded by or enveloped in such quartzite rock. If you should conclude

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that this was the fact respecting the condition and character of the Champion workings, then there would, in contemplation of law, be no vein of mineral ore there. A 'vug' is defined by Webster to be 'a cavity in a lode or vein', which would imply that such cavities were in veins; but such technical definition of the term must yield to the sense in which the witnesses employed it, and defined it, on the stand. If, on the other hand, you should find and believe from the evidence that the ore deposits were traced from the outcrop, and were deposits of like ore in cavities lying or running in a general direction or dip into the mountain, on a plane more or less uniform, and found to constitute a net-work of ore closely adjacent and near to, and often running into, each other, and within a general wall above and below, even though here and there separated in their course by quartzite rock containing like mineral matter for only short distances, this of itself would not necessarily break the continuity of the lode, as heretofore defined. * * * "

Although exceedingly extended, probably the best discussion of the subject is found in Grand Central Min. Co. v. Mammoth Min. Co., 83 P. 648. In defining a vein, the court stated:

"In all these definitions, as will be noticed, the essential elements of a vein are mineral or mineral-bearing rock and boundaries, and no doubt that, when one of these elements is well established, 'very slight evidence may be accepted as to the existence of the other'. It would seem, therefore, that where one claims extralateral rights under the acts of Congress, because of a vein existing and apexing in his ground, but which has no well-defined boundaries, he, when his claim is controverted, must, in order to exercise such rights, show a ledge or body of mineral or mineral-bearing rock of such value as will distinguish it from the country rock, or from the general mass of the

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mountain. The material must in texture and value be such as to show the existence of a vein, and the mere fact, as has been stated, or proof of the fact, that the rock is broken, shattered, and fissured, and mixed with calcareous substance, though it may show a conglomerate mass, does not establish, in the sense of the statutes, a vein. When, however, the walls or boundaries are well-defined, the vein differentiated from the adjacent country, and the kind of material mentioned constitutes the filling, evidence of slight value in mineral will, it seems, be sufficient."

And in discussing the extent of mineralization required for the purpose of establishing mineral bearing rock as a vein, the court said:

" * * * It must necessarily depend upon the characteristics of the district or country in which the vein or lode, in any particular instance claimed to exist, is located, and upon the character, as to boundaries, of the vein itself. If the country rock, or the general mass of the mountain outside of the limits of the vein, is wholly barren, slight values of the vein material, as before stated, would seem to satisfy the law; but if, on the other hand, the rock of the district generally carries values, then undoubtedly the values in the vein material, where the boundaries of the vein are not well or not at all defined, either on the surface or at depth, should be in excess of those of the country rock, else there can be no line of demarkation, nor, where the rock is generally broken, shattered, and fissured, anything to separate it from the adjacent country. Values, therefore, of the filling of a vein, must be considered with special reference to the district where the vein or lode is found. * * * "

In the Grand Central case, the Mammoth Company contended the entire limestone bed was a vein as against the contention of the existence of a distinct vein within the limestone. In discussing these contentions, the court made the following statement:

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" * * * Nor does the fracturing stop at the Grand Central ore bodies. It is shown in evidence to extend, at least as far west as the Grand Central shaft, more than 1,000 feet beyond where that wall was attempted to be located. No court would be justified in holding that, in such a formation as this, the limits of fracturing constitute the limits of the vein. Such a holding would be alike unreasonable and impracticable. It would convert practically all that whole limestone area into a vein - a vein thousands of feet wide, the like of which, we venture to say, no geologist or miner has ever known. Even if there be found an occasional vugg or fragment of ore, yet, where it is disconnected from any ore body and so intermingled with and surrounded by country rock that it cannot be regarded as continuous, it does not mark the line of a vein or lode, within the meaning of the law. * * * "

Other than general statements such as cited above, I have not been able to find any definite holding that an isolated ore pocket is not a vein or lode within the meaning of the statute. Pockets of such character usually do not have a recognizable dip, as they are usually oval in character, and this may be the reason for the lack of pertinent decisions.

However, in order to establish the "pocket" theory, it seems to me necessary to show that what Molson claims as the hanging wall limestone does not differ from what he designates as the quartzite breccia constituting the claimed vein material and that, except for the concentration of scheelite in ore pockets, there exists general dissemination of scheelite throughout the limestone in this area on the hanging wall of the Mogul fault. In other words, we would have to show that Molson's designated hanging wall of the vein is not a hanging wall at all but merely a part of the general mass of limestone lying to the south of the Mogul fault, in which isolated pockets of scheelite occur in irregular pattern.

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If this is to be the basis of our case, a very considerable amount of additional investigatory work should be done, including sampling and lamping of the alleged vein material lying between ore pockets and of the limestone which Molson classifies as the hanging and foot wall of the alleged vein.

(4) Extension of Apex of Trespass Ore Body into Morning Star.

The Molson maps show the southerly contact of the apex of the trespass ore body with the hanging wall as running parallel to the common side line just within the Pure Gold claim. If the apex could be shown to extend over the common side line, Molson would be limited to that portion of the trespass ore body lying within the Pure Gold claim, or extralaterally within a plane parallel to the Pure Gold end line drawn from the point at which the entire apex of the vein is in the Pure Gold claim. In other words, if the common side line could be shown to split the apex of the alleged vein at the site of the trespass ore body, the extralateral rights claimed by Molson might be reduced somewhat, as the Morning Star location is the senior.

The foregoing is merely an expression of my views as to the law applicable to the facts as they have been developed up to the present. I do believe that Molson has a well prepared case, and unless we can develop some new theory to counter his contentions or more factual evidence to support our present theory, I am not hopeful as to the outcome.

Yours very truly,

WILLIAM A. EVANS

WAE - GRH

cc: Mr. McFall
Mr. Tubach
Mr. Colvocoresses ✓

490 t approx

In approx 24 hrs
1072.616 @ 0.927% = 994.3 units

Apr 30 e pay 3000 per unit of m.c.s

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11.370
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2.698

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high low: Jan 30 7284 = 11.37 p.t
July 1-31 20,486

Cherry & B

Exp. milk @ 3.00	927	10.03 x 85%	x
Chute 1.55	24 =		18.91
Fabric 2.75	10.73		
Fuel 3.25	927		
High end 11.37	751.1		
	2146		
	9657		
	9946.71		
	2235		
	18.51		
	3.44	total = 3.84	

490 t del in 24 hrs

High end last	7879.5
4	24
Sub.	3.47
Sept.	2.05
	5.526

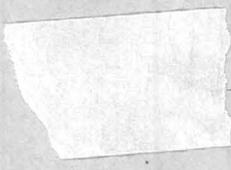
high v l last 20, 24 & 800

Ami	1.034
Exp.	361
Exp. fuel	469
high	443
low	1.19

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After Jan 30 & c no regular price for m & p
@ 60 to 100 v h. price 24.10 h by m

Cherry & B
20, 24 & 800
20, 24 & 800
20, 24 & 800



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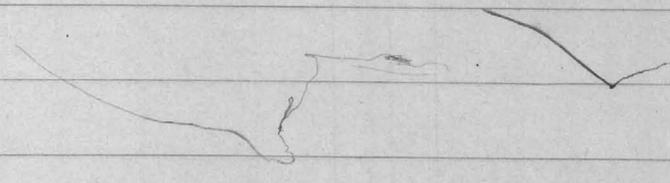
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Court sit @ 9:30 on May 7th

City of Portland, Klamm, Evans, the Falls

Map, Rucker, Hoy, Fern, Leitch, Fern, Craig

Project, Bird, Bullock

Map of, Phelan, Fredrick, Pugh, Nelson, Irving

for Map, Farney, Hudson, Jackson

Flagg, Cohen, Lerman (?) Moley, (?) Percin

Steno maps worked, as joint exhibit 2

Phelan or Kay, also they Comm side should be
4-1-44 time of letters. I am furnished the

(11) Phelan Wilson E. H. Nelson

Comm of P. S. Nelson copy of

Send Copy 1943 & 1944 copy signed

4-24-44 & 2-1-44

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and copy of map

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p. 11. a 1016

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Mr. Stuart Macmillan

#2

July 29th, 1941

Eagle Picher will positively insist upon purchasing all of the stock if they exercise their option and the entire deal might be upset if any of your stockholders refuse to cooperate as indicated above and such an arrangement as I have indicated would probably have to be made effective before we could close the proposed contract with Eagle Picher or expect to have them expend any money for development.

In any event it appears to me that a provision of this nature is both unusual and clumsy and probably you can suggest some perfectly legal shortcut which will solve the problem in a much more satisfactory manner. You are, I believe, personally acquainted or have had direct contact with most of the stockholders.

July 23rd, 1941

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Mr. Stuart Macmillan

Back of Morning Star File

In any event it appears to me that a provision of this nature is both unusual and clumsy and probably you can suggest some perfectly legal shortcut which will solve the problem in a much more satisfactory manner. You are, I believe, personally acquainted or have had direct contact with most of the stockholders and I have indicated or have had direct contact with most of the stockholders who are indicated as indicated above and whom an arrangement as I have indicated would properly have to be made effective before we could close the proposed contract with Eagle Tiger or expect to have them expend any money for development.

In any event it appears to me that a provision of this nature is both unusual and clumsy and probably you can suggest some perfectly legal shortcut which will solve the problem in a much more satisfactory manner. You are, I believe, personally acquainted or have had direct contact with most of the stockholders and I have indicated or have had direct contact with most of the stockholders who are indicated as indicated above and whom an arrangement as I have indicated would properly have to be made effective before we could close the proposed contract with Eagle Tiger or expect to have them expend any money for development.

Production & Returns on Ore (Morning Star Mine) (1)

Total Pure Lode shipment 7825 tons @ 1.512 lb O₃ which includes 1673 tons of extra lode or all of which was mined after Nelson gave the order to go over the line in April 28 & most of which was mined after May 31 1944 & during this period until they stopped mining about June 30 they were taking ore only from the h.s. & from the little cross vein at the west end of the pit

498.547 The 498 tons of trespass ore which they admit having taken from the pit was given a value of 1.06 and if this had been bought by the Metals Reserve then 85% of the lb. O₃ would have been paid for @ $\frac{2.4}{20} = 2.40$ per unit. $1.06 \times \frac{0.85}{20} = 18$ units @ $\frac{2.4}{20} = 2.40$ per unit = 21.60 per ton less charge & deduction as follows

Treatment chg. @ 3.0¢/t	3.00	21.60
Chem " @ 2.0¢/unit	1.80	7.50
Transportation @ 3.0¢/unit	2.70	14.10
Total chgs	7.50	

Net payment should have been

Total trespass ore admitted,	From pit	498.547 @ 1.06 or <u>1.016</u>
	" from h.s.	574069
	Total	1072616

Up to April 30⁴⁴ the Metals Reserve had been paying 30.00 per unit & then they cut down to 24.00 until June 30, 44 after which there was no regular price for ore & only concentrates could be sold at price that varied from 20.00 in 60% conc. & a little as 9.41 in low grade conc. Nelson gives returns &

Costs on trespass are as follows

1072.616 tons @ 0.927% = 994.3 units @ 24.00

Per ton Pay for 85% of .927 unit = 787.95 units @ 24.00 = 18,911 per ton

4
Asst.
First Charge of penalties

Milling	3.00
Chemical treatment	1.85 (based on 2.00 per unit WQ)
Freight & transport	2.78 " " 3.00 " " "
	<hr/>
	7.63

Trucking 3.25
1088, property deduction lease 8.03 as value of trespass are.

Training costs, - dependent estimate

Skilled Labor	3.470
Supervision	2.055
Industrial overhead	1.034
Engineering	0.361
Comp. Loss	0.469
Reproduction	0.493
	1.190
	<hr/>
	8672

Molson says that since h. Res. would not take this as they actually only received for same the sum of 6974.67 which means an actual net loss & then of 15,744 per ton. (22,500 - 6,506) or 16,893.31 in all the trespass are.

In blank by add right in	
In long table to	11,370
Add,	<u>10,888</u> / legitimate exp.
Total ex.	22,258
Less value	18,911
Net loss	<hr/>
	3,347 p. li.

Applying calculation separately to 498,542 tons of food on hull
 which average 1.022 + 574,065 tons of Plank level on hull,
 average 0.848, making 1072,6115 tons of trospan on hull
 I average at 0.929 (instead of .927)

498.5 @ 1.022 $\frac{85}{100}$ = 86.86 x 24 = 2085 p.4
 Less charge 11.00 (excl mining)
 9.85
 $498.5 \times 9.85 = \underline{4910.25}$ Total value food on

Plank on 574 t. @ .848 $\frac{85}{100}$ = 7108 units @ $\frac{19}{100}$ = 13,50

Less charge incl mining.		Less min cost.	1050
Milling 3.00 ?		Prof	3.00
Chen. 1.50			
Tax. etc 2.75 ?			
Truck 3.25			
<u>1053</u>			

Theoretical profit had
 have been a profit of
 $3.00 \times 574 = 1722$ on Plank

Truck 3.25
 + 4910.25
6632.25

Total actual & theoretical damage. \$ 6632.25
 Exempting damage & surface wear of 3367.75
 Total to be reported 10000.00 or reduce of 1722

American example to make 8500 total.

My photos	of samples	#	hr. S. =	to	Cost	Li Or
	Car 0	2	P.S.	1.85	0.50	9240
	31.54	5	(min min hr. S.)	0.97	0.50	9492
	31.	2	hr.	0.95	2.81	9110
	6.5-2	6	5' li	0.49	12.85	72.22
(3) N. hull (Plank) tr				0	23.1	4932
4 FD hull in lower add. 01						

my samples (excl #3) found variate in ≈ 6.3
of four trees ≈ 1.58 , - in CaO fr 0.50 & 23.10
& in LiO fr 49.32 & 94.92, ≈ 0.39 LiO₂ fr
together

5/5/44

MEMO RE APEX INVESTIGATION

Southern Belle Group owned by Mrs. Woods of Oracle, George Darnell, Attorney, Phone Tucson 72.

Lessees -- Tubac

represented by Ellinwood and Ross of Phoenix (Joe Jenckes) who employed me to make this investigation and a report for fee of \$150.00 with provision that additional services in court or otherwise should be paid for @ \$100.00 per day.

Claims surveyed by T. L. Stevens of Tucson, Phone # 3044.

Manager of operations Mr. ^{Sam} Richards who will meet me at Woods Store at 10 A.M. on Sunday and go with me to claims and show me the line between the Morning Star of the Southern Belle Co. and the Pure Gold Claim of the alleged trespasser (~~Control Mines~~) who are mining scheelite across the line on the Morning Star claiming that they have Apex Rights from the Pure Gold.

The rights and wrongs of this claim are for me to determine.

Take notes from Reports on Southern Belle and from study of Apex rights from U.V.X. and equipment.

NOTES RE MORNING STAR CLAIMS

Visited May 7th, 1944.

(See file on Southern Belle Mine)

Group of Claims includes:

Morning Star, Survey #1836

Gold Bug

Happy Thot

General Hancock

West Bell

Lobo

Mischief

Apache Girl

Tom Cat

Dolphin

Cross Town

Senator

Alto

Southern Belle

Missing Link

Careless

Lewis Lode

All patented and shown on map by T. L. Stevens from surveys made in 1929 and 1935.

Owned by Mrs. Woods of Oracle, represented by Judge *Darnell* Attorney of Tucson and operated under lease by Morning Star Mining Co. with Guy Richards as superintendent and some associates are W. S. Tubach

who is also operating a mine near Wickenburg and is a client of Ellinwood and Ross and Wm. Iverson and L. M. Forcey who were at the mine.

All of these men are from Santa Ana, California and none except Richards have had any experience in mining. They have been working these claims since September '43 and have as their foreman Riviera, who had previously operated the Morning Star with his brother since 1939 or 1940.

The Pure Gold Claim and others in that group are operated by E. H. Molson and Ewing (with whom I had a conference re Southern Belle in February 1921), and they may call themselves the Bonito Mining Co. Their Superintendent is Wm. Ward formerly with the Mammoth Tiger Co. Met Ward and Ewing and the latter has been connected with operations in this section since 1912 and knows a lot about local conditions. He mentioned the Mogul Fault which is the principal structural feature of the district and causes a displacement of 2500' with drop on the south side and the fault zone is 1000' wide with a lot of brecciation and low grade mineralization.

Ewing also said that the metamorphosed rock overlying the true granite and below the limestone and quartzite was known as "^{mylonite} ~~millerite~~" (not in glossary) and was really a mica ^{schist} from which the mica had been removed. ^{Dynamic metamorphism} Ewing said that Joraleman and his assistants had made a thorough geological examination of this area to determine its value as a source of scheelite.

We visited the northeast corner of the Morning Star Claim (Survey #1836) and sighted along the north end line of the claim across the gulch which is about 100' away and up the slope where the open pit of the Pure Gold people has broken over the line about 300' from the corner and they have crossed not more than 4 or 5' along the rim of the open

stope but for a greater distance below possibly a maximum of 10 or 12' and over an area of 30' by 8', average depth by 15' high, say 3600 cubic feet from which perhaps a total of 300 tons of material including 200 tons of ore have been taken by the trespasser. Contour of open stope is very irregular and this estimate is approximate. The average grade of the stolen ore is not known but may be estimated at an average of 2% $W.O_3$.

All workings visited on both Morning Star and Gold Stope Claims were in limestone with small sections of quartzite mixed in and some intrusions of quartz. *which Blake classifies as Silurian or Devonian.*

All of the limestone is fractured and cross-fractured but there does not appear to be any true bedding plane and there is no sign of any true vein with walls but merely kidneys and pockets of better grade ore occurring in an erratic manner and with all shapes and sizes while the content of $W.O_3$ fades out into the wall rock much of which will run 1% or less.

There are a great many fissures and fairly large caves in the rock, also many smaller vugs and other evidences of water action and dissolution of the more soluble constituents of the rock.

The trend of the first open pit (going west) in the Morning Star Claim and the main open pit in the Pure Gold might make it appear that these kidneys lie along a mineralized zone (which some might term a vein) striking $N 50^{\circ} W$ to $70^{\circ} W$ and dipping to the southwest from 55° to 70° but this condition is not borne out by a thorough investigation of all of the workings and surface showings.

There is no apparent relation between the ore bodies and the quartzite or quartz nor with the open fissure and vugs and all of the pay ore

seems to fade out with depth so that the bottom of the big open pit appears to have run out of the better grade of ore and the same is true of the south face where limestone is coming in near the bottom although there is still a scale of good ore on the face which might represent another 50 - 100 tons of ore to be yet taken from the Morning Star ground.

Nearly all ground developed by the lower tunnels is too low grade to pay but there was some good ore in the Morning Star upper and eastern adit and below in an underhand stope which it is planned to catch from the adit but if it had gone down as predicted with a dip of 56° they would have found it already, but they have not done so.

Ore sold for \$30 per unit of $W.O_3$ until recently but now the price has been dropped to \$24 per unit. For a time the Morning Star tried to mill their ore locally but could not make a good recovery and now ship crude to the Government stock pile at Queen which pays on the following terms.

Distance, via Chandler to Oracle to Mine about 126 miles and via Florence Junction 129 miles, Mine to Oracle is about 8 miles.

Met ^{Hermin} Durbin who was once with Phelps Dodge Co. at Morenci and now lives in Oracle.

EXTRACTS FROM REPORT UPON THE SOUTHERN BELLE GOLD PROPERTY

OLD HAT DISTRICT, PINAL COUNTY, ARIZONA

BY WILLIAN B. BLAKE, GEOLOGIST AND MINING ENGINEER -- APRIL, 1906

THE MORNING STAR GROUP

Morning Star	20.35	acres
Happy Thot	20.35	"
Gold Bug	15.11	"
General Hancock	<u>15.11</u>	"
	153.68	"

The lowest substratum or foundation for the strata is the coarse grey, porphyritic granite of Oracle - the "Oracle Granite", which covers a wide area in the northern and central parts of the Old Hat District. This is traversed by heavy intrusive masses or dykes of diorite, by which the stratified formations have been uplifted, and to a varying degree altered by hardening and by the flow of the silicized water forming the quartz veins.

THE MORNING STAR GROUP

This group of several claims is north and west of the Southern Belle Lode, and the claims cover a different system of lodes. I find there is a series of massive croppings of quartz resembling reefs of quartzite at and near the contact of the older limestone and granite.

EXTRACTS FROM REPORT UPON SOUTHERN BELLE GOLD PROPERTY

BY CARTER AND SMITH, CONSULTING MINING ENGINEERS -- JUNE 16th, 1913.

MORNING STAR SCHEELITE.

As mentioned before, only surface development work has been done on this promising deposit and a small tonnage milled with good results.

This work is not far enough ahead to determine the size of the deposit which is in blue limestone and quartzite.

MORNING STAR ORE

Tonnage. 11 tons 1871 lbs.

Crude concentrate No. 1 & 2 Wilfley's	404.5 lbs.
" " Johnson Vanner	<u>19.2</u>
	423.7 lbs.

Crude concentrate 1.77%

W O₃ in concentrate 52.12%

W O₃ in tailings .47%

423.7 lbs. 52.12% concentrates = 202.8 lbs. 100%

Ore = 1.38% W O₃

As the prices F.O.B. Tucson, for 60% W.O₃ concentrates average \$400.00 per ton, the gross value per ton would be for both runs \$9.00 per ton. Each run took about 10 hours as the ore is easily crushed.

SUGGESTIONS:

These arguments hold good in respect to the scheelite deposits. More work on the surface is required on the Morning Star before a short cross cut tunnel driven in the side of the slope on which it is located and which would cut at a considerable depth under the present surface showing. Both the Maudina and Morning Star deposits appear rich enough to furnish the present mill with enough ore to pay for development work on these claims. At the same time, work on re-modelling the present mill, which seems unnecessarily complicated, could be done. The two mill tests show that the extradition of values can be made higher without increasing the cost of treatment per ton.

What is known at the Contact vein --or Free Gold vein contains, at depth a sulphide ore carrying gold and silver dissimilar to the Southern Belle and perhaps not suitable for amalgamation any cyanidation, if so,

it is a concentrating proposition and as the scheelite mill is practically a concentrating plant, the treatment of these ores might be done with a few moderations, in the same mill.

March, 1945

NOTES FOR MORNING STAR APEX SUIT REPORT AND TESTIMONY

GENERAL STATEMENT:-

The Morning Star Claim was located on February 26th, 1883 and patented October 12th, 1903, Mineral Survey #1836.

It is a senior location to the Pure Gold Claim which is recorded in Book 1 of Mining Locations of Pinal County at page 449, having been located on June 17th, 1908, and for which a patent has only recently been applied, the application being designated #080651 in the Federal Land Office.

Both of these claims are located in the Old Hat Mining District, Pinal County, Arizona and the north side line of the patented Morning Star Claim, running due east and west, was designated as being the south side line of the Pure Gold Claim with common corners at each end of this line.

Both of these claims were originally located because they were believed to contain veins of gold-bearing ore, and the existence of tungsten ore (scheelite) in this vicinity was apparently first noted around 1912 and during the First World War some scheelite was produced from the Morning Star and also from the Modina property lying some distance to the northeast. The recent production of scheelite appears to have started in 1940 on the Morning Star and in 1943 on the Pure Gold. No operations of this nature were noted on the Pure Gold Claim when the

area was examined in June of 1941 by E. D. Wilson, Geologist for the Arizona Bureau of Mines.

The trespass on and under the surface of the Morning Star Claim is said to have started in or about April, 1944 at which time the Pure Gold operators asserted their legal right to conduct work under the Morning Star Claim by virtue of extra-lateral rights derived from the apex of a vein which they alleged to have an out-crop on the Pure Gold and to dip across its south side-line and into the Morning Star property. This trespass was initiated and continued over the protest of the Morning Star operators and has resulted in the production of a substantial quantity of valuable ore mined from points lying south of the vertical projection of the common side-line.

There is no dispute as to the location of the corners of the Morning Star Claim which were clearly marked by the Deputy Mineral Surveyor, nor in respect to the course of the said common side-line which has been staked out running due west from the northeast corner of the Morning Star Claim and across the glory hole which now breaks over the said side-line for a length of 82' and to a maximum distance of 16' as shown on the accompanying map and in the photographs.

It therefore appears that the question at issue is narrowed down to the actual existence or lack of existence of a true vein, ledge or lode within the meaning of the statute and as this has subsequently been interpreted by court decisions and the existence of its apex on the Pure Gold Claim and from which the vein could be followed downward along its dip below the surface of the Morning Star.

In the event that the court should determine that no extra-lateral rights existed in favor of the Pure Gold operators it would become necessary to determine the value of the ore which has admittedly

been mined by the Pure Gold operators under the surface of this claim.

SURFACE TRESPASS:-

The trespass on the surface of the Morning Star is very definitely proved by the survey and photographs and can hardly be denied by the defendant. There is nothing in the Apex Law which gives the owner of any vein entitled to extra-lateral rights the privilege of trespassing on or disturbing the surface of a neighboring claim and in this case the caving of the said surface is entirely attributable to the inefficient and careless methods of mining employed by the Pure Gold operators who under-cut the rock without leaving proper support so that many fragments and one large boulder weighing several hundred tons have caved down from the Morning Star property and fallen into the open pit.

Subsequently,-at the direction of the State Mining Inspector, who condemned these workings as being absolutely unsafe, the Pure Gold operators have shored up the hanging wall of this glory hole with heavy timbers, but the said workings are still unsafe and further falls of rock from the Morning Star property are almost certain to occur in the near future.

While the tangible loss caused by the breaking away of the surface of the Morning Star Claim is problematical, the Morning Star people should be entitled to exemplary damages by reason of a wholly unwarranted invasion of their property, and no doubt the Court will determine this matter separately from any question of extra-lateral rights and damages which are claimed by reason of the illegal ~~irregular~~ mining of ore from the alleged vein.

The surface of the Morning Star Claim is now caved from a point exactly 250 ft. west of the northeast corner to a point 82 ft. further along the common side-line, namely 332 ft. from the northeast corner of the Morning Star. The outline of the surface caving produced is irregular but its maximum extent south of the common side-line is 16 ft. at a point 67 ft. beyond the east end of the break, and thus a total of approximately 1000 sq. ft. of surface has been allowed to fall into the glory hole from the Morning Star Claim.

On the occasion of my previous visit, May 7th, 1944, it appeared that there was a small showing of ore in the nature of a pocket located at the top of the cave which had then passed only 4 ft. south of the common side-line. The conditions at this point were too dangerous to permit careful examination or sampling but apparently this pocket of ore has since fallen into the glory hole along with the surrounding rock and is either buried in the debris or has been mined by the defendant, even though as mentioned the outcrop was actually on the surface of the Morning Star Claim.

The provision of the Mining Act of 1872 which applies to the above reads as follows:--

"And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another."

THE SUB-SURFACE TRESPASS & FAILURE OF EXTRA-LATERAL RIGHTS:--

Since the defendants have admitted entering upon and removing ore from the Morning Star Claim they are prima facie trespassers. by their own admission ~~the defendants were trespassers~~ and must be so

considered unless and until they can establish their extra-lateral rights. Therefore, the burden of proof rests upon them to confirm the statements in their Answer to the Complaint by adequate and competent testimony. In this connection I suggest that reference may be made among others to the following quotations and citations:--

The presumption, where a miner is found beyond his side-lines, is against him. He is prima facie a trespasser till he has shown that he gets there by following the lode on its dip from its apex within his lines,--Cheesman v. Shreeve, 16 M.R. 79; 37 F. 36; Blue Bird Co. v. Murray, 9 Mont. 468; 23 P. 1022; Bell v. Skillicorn, 6 N.M. 399; 28 P. 768; Cons. Wyoming Co. v. Champion Co., 63 F. 540; Iron S. Co. v Campbell, 17 Colo. 267; 29 P. 513; Duggan v. Davey, 4 Dak. 110; Leadville Co. v. Fitzgerald, 4 M.R. 380; Doe v. Waterloo Co. 54 F. 935; Maloney v. King, 25 Mont. 188; 64 P. 351; Red Wing Co. v. Clays. 30 Utah 242; 83 P. 841; Gr. Cent. Co. v. Mammoth Co., 29 Utah 490; 83 P. 648; Kelly v. Ophir Hill Co., 169 F. 601.

A bill to quiet title to extra lateral rights will not lie where there has been no development to show whether they exist or not.-- Kelly v. Ophir Hill Co., 169 F. 601.

Prima facie all ore bodies lying beneath the surface of a mining claim are the property of the owner of such claim.

Empire State, etc., Min., etc., Co. v. Bunker Hill, etc., Min., etc., Co. 114 Fed. 417, p. 418.

See Cheesman v. Shreeve, 37 Fed. 36

Blue Bird Mining Co. v. Murray, 9 Mont. 468.

Notwithstanding the extralateral rights given by this section the presumption is that all ore bodies found within the surface lines of another location belong to such location.

PRESUMPTION OF OWNERSHIP OVERCOME BY PROOF:

The presumption of ownership in the locator of all within his location lines throughout the entire depth prevails until it is shown that the veins or lodes within the places of his lines extended downward vertically have their tops or apices in the surface of some other valid location in such a way as to give the owner of the latter location the right to pursue them on their downward course.

St. Louis Min., etc., Co. v. Montana Min. Co., 194 U.S. 235, p. 239.

Doe v. Waterloo Min. Co., 54 Fed. 935.

Consolidated Wyoming etc., Min. Co. v. Champion Min. Co.
63 Fed. 540

Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139.

The presumption as to ownership of all beneath the surface, including minerals, may be overcome by proof showing that such mineral is a part of a vein or lode apexing in a claim belonging to another, but this is always a matter of defense.

Lawson v. U.S. Min. Co. 207, U.S. 1. P. 8.

The burden of proof is upon the party claiming ore bodies within the limits of another valid claim to overcome the presumption of ownership arising from the possession of such ore bodies, and to show by a preponderance of evidence that the apex and the strike of the vein are within the vertical planes of his own surface location and that between planes drawn vertically downward through the end lines of his location and a certain parallel line the vein from its apex on its dip is continuous, and that the continuity extended to and through the adjoining claim in controversy, and that the ore bodies, the subject of the controversy, form a part of such vein.

Grand Central Mining Co. V. Mammoth, 29 Utah 490 P. 551

See Doe v. Waterloo Mining Co., 54 Fed. 935

Consolidated Wyoming Min. Co. v. Champion Min.Co. 63 Fed.540

Pennsylvania Consol. Min.Co. v. Grass Valley Exp.Co.,117 Fed. 509.

Leadville Min. Co. v. Fitzgerald; 15 Fed. Cas. 98

Iron Silver Min. Co. v. Campbell, 17 Colo. 267.

BURDEN OF PROOF IN ASSERTING EXTRALATERAL RIGHTS:--

The burden of proof is upon the owner of a mining claim where he seeks to follow a vein or lode on its downward dip outside of the side lines of his location to show that such vein or lode has its apex within the surface lines of his location.

Doe v. Waterloo Min. Co., 54 Fed. 935, p. 937

Consolidated Wyoming Gold Min. Co. v Champion Min. Co.,63 Fed. 540 p. 550

Carson City Gold, etc.,Min.Co. v. North Star Min. Co., 83 Fed. 658 p. 663.

See Leadville Min. Co. v. Fitzgerald, 15 Fed. Cas 98.

Duggan v. Davey, 4 Dak. 110.

The burden of proof is upon a plaintiff to show affirmatively that he is entitled to a vein or lode claimed by him and the apex of which is within his surface lines.

Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. 666, p. 672.

Waterloo Min. Co. v. Doe, 82 Fed. 45 p. 55

To justify the subversion of the territory underlying the surface location of one claim by the owner of an adjoining claim, the burden is upon the latter to prove that a vein or lode of mineral ore has its out-crop or apex inside of the surface lines of his location, and that he

reached the point of the alleged subversion by pursuing such vein from its outcrop or apex.

Cheesman v. Shreeve, 40 Fed. 787, p. 791.

A person claiming extralateral rights and seeking to take ore bodies from beneath the surface boundaries of another location must prove clearly and satisfactorily that he has the apex of the vein or lode within the surface boundaries of his location, and that he is pursuing the vein on its downward course.

Stewart Min. Co. v. Ontario Min. Co., 23 Idaho 724, p. 743.

See St. Louis Min. Co. v. Montana Min. Co., 194 U.S. 235.

TRESPASS--PRESUMPTION AND JUSTIFICATION:--

A person entering within the side lines of the mining claim of another to mine and take ore therefrom is prima facie a trespasser.

Cheesman v. Shreeve, 37 Fed. 36

Montana v. Clark, 42 Fed. 626, p. 630

Doe v. Waterloo Min. Co. 54 Fed. 935, 939

Blue-Bird Min. Co. v. Murray, 9 Mont. 468, p. 475.

A person entering upon a valid location of another is a trespasser, and it will not be presumed that Congress intended that any rights should be created by trespass.

Note by G.M. Colvocoresses:-

In this case it does not appear that the plaintiff had proved his rights by any development work or otherwise before he committed the trespass in the spring of 1944, and it may be that it will be only by virtue

of conditions claimed to have been developed by this trespass that he will attempt to prove his rights.

Del Monte Min., etc. Co. v. Last Chance Min., etc. Co.,
171 U. S. 55, p. 74.

PROOF REQUIRED BY DEFENDANT:--

From all of the above it would appear that in order to prove that a vein exists at the point of trespass the defendant must definitely locate and describe this vein showing on a survey map the line of the outcrop or apex as it originally existed and as it may now be found and traced in their workings and the length and width of the said vein, also its exact strike and dip.

In refutation of this proof the testimony of our witnesses and the surveys and photographs may be used as indicated below, but since it is very difficult to refute such a general and indefinite claim as has been made in the Answer to the Complaint, I have suggested that the defendant should be requested to give these details and to submit a survey showing all this data just as soon as possible and well in advance of the trial.

In making my recent examination of this property particular attention was paid to the surface of the common side-line, approximately 217 ft. west of the northeast corner of the Morning Star since the defendant alleged that a vein of ore outcrops at this point. Actually, no such outcrop can be seen here or anywhere in the immediate vicinity, nor has any mining work been done closer than the east end of the open pit which is 33 ft. further to the west.

In respect to the trespass under the surface of the claim it is alleged by the plaintiff and admitted by the defendant that they have mined a considerable quantity of ore under the Morning Star to which they claim that they were legally entitled by virtue of extra-lateral rights below the outcrop or apex of the above mentioned vein.

The defendants claim that this alleged vein had a strike to the northwest and southeast and a dip to the southwest but in no case do they give the exact or even approximate course and their description is therefore very indefinite and wholly inadequate.

However, it is obvious that if any vein had actually crossed the common side-line at or near the point indicated and with such a strike and dip as they allege, the apex or outcrop of this vein should be found along the surface of the Morning Star southeast from the common side-line and, -unless it pinches out within a very short distance of the point of intersection with the side-line, -it should continue across the east end line of the Morning Star. Actually, there is absolutely no evidence of either the outcrop or underground continuation of such a vein southeast of the common side-line and again there is no evidence of the outcrop or downward extension of the alleged vein to the northwest of the present open pit. It must therefore be assumed that either no such vein ever existed or that its length was limited to the length of the present open pit which extends almost due east and west on the Morning Star and Pure Gold claims for a total length of approximately 180 ft. If any such outcrop of apex actually existed within this area the evidence of same has been destroyed by the defendant and had already been destroyed before I first visited the property on May 7th, of 1944.

As tending to prove that actually there never was any such outcrop or apex and that no true vein, ledge or lode exists or has ever existed at or near the point of trespass, I will cite among others the following facts:-

No indication of any such vein now appears along the south face of the open pit which should be the case provided the dip of this vein were less than 45° . Again, no such vein has been found in the raise which the defendants put up from their workings south of the open pit to the surface at a point almost directly on the common side-line.

It is stated that in this raise, which is no longer easily accessible a little ore was found very close to the top, but since this raise is located at a point some 350 ft. west of the northeast corner of the Morning Star and a short distance west of the caving of the surface by the open pit, it cannot logically be alleged that any showing so located forms a part of the vein on which the defendants claim extra-lateral rights as this should lie much farther to the south.

Again, no such vein was found in the two diamond drill holes which were put down by the Morning Star Company at locations shown on the map and where the cores which I examined showed no mineral or any indication of vein material.

In the crosscut which runs south from the glory hole for a distance of approximately 31 ft. (namely 47 ft. south of the common side-line) a little low grade ore mixed with lime is noted near the face, but this is very obviously a pocket and again it could not, possible be claimed that it formed any part of the trespass vein, for in that case the said vein would be clearly visible along the south face of the pit.

Assuming that the defendants claim that the dip of the trespass vein exceeded 45° then the continuation of said vein would lie along its dip below the bottom of the open pit and would not be visible in any of the workings above mentioned. However, the lower adit in the Pure Gold workings passes directly under the pit approximately 20 ft. below its present bottom which is partly filled with debris and the same distance below its south crosscut from the pit which in turn is about 35 ft. below the surface. The said lower crosscut reaches the common side-line and passes a few feet beyond it at one point and here there is a small pocket of ore which is now largely worked out and which in turn could not possibly be connected with the trespass vein. In the three raises which have been put up from this lower adit to be used as ore passes for the material mined in the open pit there is absolutely no indication of any vein as far as can now be ascertained, and I am informed that no showing of this nature was found when the raises were actually open. We therefore have a vertical cross-section of the entire formation from the surface down to a point approximately 70 ft. below and in which there is no trace or indication of the alleged trespass vein, although it should have been noted in this crosscut section provided it had outcropped any where between the northeast corner of the Morning Star and a point 350 ft. farther to the west with a northwest-southeast strike and any dip to the southwest less than 70 to 80°/would have carried it directly down to the Mogul Fault before it would have entered under the Morning Star Claim.

AFFIRMATIVE PROOF THAT NO VEIN OR EXTRA-LATERAL RIGHTS EXIST AT OR NEAR THE POINT OF TRESPASS:--

In opposition to any testimony by which the defendant may support his contentions we should lay particular stress upon the true nature of this mineral deposit.

In this connection we should aim to show that neither at the location specified by the defendant nor anywhere else in its vicinity has there existed or does there now exist any vein, ledge or lode. within the legal or commonly accepted definition of those terms but that actually the deposits of scheelite ore found at and near the point of trespass and elsewhere on these two claims are merely pockets or kidneys erratically distributed thru the limestone and breccia over a wide area along the hanging wall of the Mogul Fault; and that neither the fault fissure itself nor the mineralized zone which is wholly non-commercial constitutes a vein nor acts as host to any true veins of ore.

In this connection I cite the following quotations and decisions:

Probably the most conclusive proof concerning the character of the trespass ore body and in fact all of the scheelite ore bodies developed in either of these claims is found in the location and outlines of the stopes and pits that have been worked out in the past and of the shoots of ore which are still left in place.

An examination of the surface map shows that these deposits follow no regular patterns, but occur like plums in a pudding scattered around in a most irregular manner and this holds true with depth as well as on the surface. There are only one or two of the stopes in which the length was substantially greater than the width and in each of these cases an elongated lense rather than a vein deposit was suggested.

The trespass deposit itself has now been mined out but I examined a portion of it last May and as far as can be judged from the outline of the workings it seems to have been an elongated pocket with a length of perhaps 50 ft. and a width of nearly 30 ft. partly extending

across the common side line both on and below the surface and pinching out entirely at a depth of not over 40 ft. Another similar shoot was found and mined to the north west on the Pure Gold Claim, another is found to the east at the top of a raise and close to the common side line while still another shoot of lower grade ore mixed with limestone is partially developed on the Morning Star Claim at the south end of the cross-cut driven from near the bottom of the open pit. None of these shoots are connected with each other or lie along the plane of a vein.

In checking over the reports and descriptions of this property I have so far failed to find any reference to a "vein" at or near this trespass location. Nowhere in the drawings or text of their pamphlet do the U.S.G.S. Engineers use the term vein, ledge or lode as applied to the scheelite ore occurrences to which they always refer as "ore bodies" or "ore zones." In the text they refer to deposits "in silicified limestone breccia localized along the Mogul Fault and its related structures." They state that "the fault includes many planes of movement over a wide area"; and that the principal zone of brecciation is about 50' thick where it is exposed in the Pure Gold workings.

The term "related structures" is very vague and probably covers a large area as may be judged from the mention of several occurrences of ore in silicified zones of limestone at various points south of the fault as well as in breccia.

Elsewhere they mention the Pure Gold ore body (not vein) as being "localized in silicified breccia in the principal Mogul Fault zone" where the ore zone ranges from 5 to 40' in width at the surface where it was exposed for a length of about 200'. and Actually since the date of their visit last February three ore pockets have been mined out in

this area. They mention that most of the ore produced from the Morning Star deposit at another point was taken from a "glory hole" which would be a most unusual method of mining ore from a vein and it is evident that here as well as in the other sections of the property the scheelite was erratically distributed in ~~an~~ irregular elongate bodies of silicified limestone which sometimes trend northeast, i.e., at right angles to the strike of the fault and to the strike of the alleged vein which occurs at and near the point of trespass.

On the cross section map they show a wide band of quartz and silicified limestone lying along the hanging wall of the crushed zone and indicate that this formation may contain an average of 0.1% $W O_3$. Since the gross value of such material was only \$2.40 per ton (even when the Government was paying \$24.00 per unit of $W O_3$) and working costs were at least 4 times that figure it is obvious that the filling of this mineralized zone was not commercial ore and that any mining would have to be confined to ore bodies lying within the zone. In every case these ore bodies appear to have been pockets of irregular size and shape, nearly always associated with cracks or vugs in the rock and differentiated from the surrounding rock merely by the higher percentage of scheelite which they contained and not by any well defined walls or change in the character of the rock.

My own opinion in this regard seems to be in agreement with all of the officials and employees of the Morning Star Company whom I have met and also with G. L. Derwin, a registered Mining Engineer now living in Oracle who visited the ground twice in my company and who will be glad to testify at the trial if we desire him to do so.

Among other witnesses who might be asked to testify I would especially mention a Mr. Mohney (now employed by the Eagle-Picher Co.) who once supervised the work for the Morning Star Company, and whom I know to be an experienced and competent miner. However, I have not had any opportunity to personally obtain Mohney's opinion regarding the character of these deposits and this would obviously be an essential preliminary to calling him as an expert witness.

According to Forcey and Henderson several of the engineers and foremen previously employed by the Morning Star could be called on to give testimony in general agreement with my opinion and they also say that Ward who was for some time superintendent or foreman for the Pure Gold people repeatedly stated that the trespass ore body was a pocket and not a vein and has indicated his willingness to testify to that effect.

To support the claim of the defendant, E. J. Ewing who is part owner in the Pure Gold operations will very probably testify that he found and followed down the dip of a vein as specified in the defendant's answer. Ewing is not a registered Mining Engineer in Arizona and his personal interest in the outcome of this suit will doubtless be fully considered by the Court.

Mr. T. N. Stevens, the Deputy Mineral Surveyor is also likely to be called since he has recently been surveying the Pure Gold Claim for patent and has also surveyed the underground workings of both claims in the vicinity of the trespass. As a surveyor he could hardly qualify to testify in respect to the nature of the ore deposits and so far it does not appear that there is any dispute regarding the location of the claim lines or mine workings, although this can only be determined after

we have been furnished with copies of Stevens' recent survey maps.

Pennybaker, who has recently examined the property on behalf of the defendant is a high class geologist altho he is not registered in Arizona. I have not been able to learn the nature of his findings or testimony which may or may not prove damaging to our case. I have not been able to learn that any other Engineers or Geologists have recently examined the situation nor what other witnesses, if any, will be called by the defendant.

Citations bearing on the all important question of the nature of the deposit may be mentioned as follows:--

Ore in pockets, vugs, or other irregular and disconnected occurrences without vein matter between does not make a lode--
Cheesman v. Shreeve, 40 F. 787. Nor ore bodies formed outside the fissure.--Tombstone Co. v. Way Up Co., 1 Arizona. 426.

Ore disseminated at intervals, or found in channels, chutes, cavities, pockets, or other irregular occurrences at intervals in quartzite, without ore connections between the same, is not a vein or lode within the meaning of the statute.

Cheesman v. Shreeve, 40 Fed. 787, p. 789.

Where deposits of ore are only found in vugs in small quantities, lying in no general direction, widely separated, and found in excavations only after driving a tunnel for a considerable distance through hard quartz rock, and where such vugs of ore lay in detached cavities, more or less like a trough, and wholly surrounded by or enveloped in such

quartzite rock, such deposits would not constitute a vein or lode within the meaning of this statute.

Cheesman v. Shreeve, 40 Fed. 787, p. 794.

The term vein or lode can not be applied to every metalliferous zone of country to which boundaries can be found, as this would reduce all mining districts to one lode.

Mt. Diablo, etc., Min. Co. V. Callison, 17 Fed. Cas. 918.

Waterloo Min. Co. v. Doe 82 Fed. 45 p. 54.

See Eureka Consol. Min. Co. v. Richmond Min. Co., 8 Fed. Cas. 819.

WHAT CONSTITUTES A VEIN OR LODE:--

The usual definition of a vein or lode is an aggregation of mineral matter containing ores in fissures of rocks.

Waterloo Min. Co. v. Doe, 82 Fed., 45 p. 54.

A vein or lode as used in this statute applies to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

Iron Silver Min. Co. v. Cheesman, 116 U.S. 529, p. 531.

Eureka Consol. Min. Co. v. Richmond, 8 Fed. Cas. 819

Stevens v. Williams, 23 Fed. Cas 40.

Mammoth Min. Co. v. Grand Central Min. Co., 213 U.S. 72, p. 77.

An occurrence of ore, usually disseminated thru a gangue, or veinstone, and having a more or less regular development in length, width and depth. A vein and a lode are, in common usage, essentially the same thing, the former being rather the scientific, the latter the miners' name for it (Century). See Lode, Fissure; Fissure vein.

The filling of a fissure or fault in a rock, particularly if deposited by aqueous solution. When metalliferous it is called by miners a lode; when filled with eruption material a dike. A bed or shoot of ore parallel with the bedding. Called also Blanket-deposit. (Standard) A crack in rock filled by mineral matter deposited from solution by underground water. A lode (Webster).

A vein or lode as used in the law applies to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. (Iron Silver Mining Co. v Cheesman, 116 U.S., P. 531; Mammoth Mining Co. v. Grand Central Mining Co., 213 U. S. P. 77).

Vein or lode does not mean merely a typical fissure or contact vein, but any fairly well-defined zone, or belt of mineral-bearing rock in place (Cast Tintic Cons. Min. Claim, In Re 50 Land Decisions, p. 273).

A comparatively thin sheet of igneous rock injected into a crevice in rock. When this intrusion is large it is called a dike. (Webster).

MORNING STAR MEMO

RE: PENNYBAKER'S MAPS

His gray limestone on footwall of vein is really the fault breccia on the hanging wall of the Mogul Fault as may be noted in my photos. There is no definite line of demarcation between the limestone and the quartz scheelite, but merely a gradual increase in the quartz content of the lime as this work becomes more and more silicified and the content of scheelite increases with the higher percentage of quartz.

It is important to note the break in the alleged vein at the west end of the open cut from which point there is no ore until one reaches the east end of the big pit where I took samples #1 and #2. It is difficult to differentiate between the so-called quartz-scheelite vein in the pit and the dark limestone on the hanging wall since the dividing line between these two formations is now all caved into the pit and the true conditions under the open cut as they originally existed cannot be determined.

Pennybaker shows varying dips of his vein from 40 to 50°, but where he marks the hanging wall on the surface and at the plank level it appears that this would have to dip 35° in order that they would represent the same body of ore.

I have shown a break in the ore showing between the big pit and the point on the surface where we sampled just south of the line, but actually this ground is all covered with over-burden and the outcrop might be continuous if the surface were properly cleaned off. The surface showing which we sampled at this point appears to connect with the lower workings and the horse of rock shown by Pennybaker is not included in the vein, but is really a break in the vein. The shoot of ore at the west end of the trench and tunnel is not a continuation of the vein, which he has shown

in the pit, but this ore makes on cross-fracture and the strike is nearly north-south.

We shall aim to prove:--

(1) That the ore occurs in pockets in a wide mineralized zone of limestone which extends for a long way south of the Mogul Fault and carries a small percentage of scheelite which increases wherever there is a zone of intense silicification.

(2) These ore pockets are not connected. They do not have a similar dip or strike and the surface pockets do not extend to any great depth while ore shoots found in the lower workings apparently do not come to the surface.

(3) The surface pockets found in and near the big pit all cut across the common side-line resulting in a split apex.

(4) Most of the ore-bodies have made along the cross-fracture which usually trend north and south or they have made at the end of one of these cross fractures which served as a channel for the solutions which replaced the limestone with silica and scheelite.

(5) The statement that 7,800 tons of ore were mined from the big pit would indicate that mining was already carried on to an average depth of about 20 ft. below the surface and below that point it is believed that the workings were all barren in limestone except at the points where underground ore pockets were discovered.

Pennybaker shows the Mogul Fault with the crushed granite for its footwall or gouge and then gray fractured silicified limestone with a width of 20 - 50' forming the footwall of the quartz-scheelite vein which had a width of some 40' for a length of 60' and then for 200' a width 10 - 15' and at south east end it was narrower.

Next came a band of dark-limestone forming the hanging wall of the vein. On map note that there is a little cut on side line 213' from east corner which actually shows no ore.

A drill hole (showing no ore) was put down 5' north of the west end of the Morning Star ore bin and another drill is on the road at a point 85' south of the side line 333' from corner and this was sunk 100' and found no ore.

On defendant's plan map their lines A-B and C-D cross the trespass ore shoot at point 300' west of corner and it is here that the photos were taken and show conditions which would not maintain for even 20 - 30' on either side.

In Morning Star open cut the pay ore pinches out at the end and there is none left in the drift altho some of the rock there assayed 0.25% W O 3.

Peter Houry of the Arizona Bureau of Mines expressed an opinion on the nature of the ore deposit similar to mine, altho he would not want to be called upon to testify.

Pure Gold Co. have sunk 2 drill holes beyond west end of workings the northerly one of which cut ore at 56' with width of 5' while the same ore was found in the south hole at depth of 93' corresponding to dip of vein. Here the core barrell stuck in the hole.

SPECIAL NOTES RE MORNING STAR AFTER THIRD VISIT (APRIL 25,26,27)
AND CONFERENCES WITH FLAGG & OTHERS

GEOLOGY:--

Flagg is in general agreement with my opinions. He noted some small veinlets or pockets of quartz and seams or fracture planes that might be called walls, but there was no well defined vein with recognizable dip or strike for any distance, and most of the ore came from pockets in the lime where the silicification has been most intense and solutions have in some cases followed water courses or series of vugs.

The Mogul Fault with wide gouge and granite, etc. on foot wall seems to cross the common side line about 200' from the corner with a strike (about N. 65° W. and a dip of 55° to the southwest) but both of these vary to a large extent-dip 30 - 60° and farther west the fault swings more to the north, brecciation hard to determine, but U.S.G.S. say 50' on Pure Gold.

Some of the original bedding planes are very steep with dip as much as 75° to the east or south and strike N. 20° W, but elsewhere altho the strike is generally to the north-west the planes seem to dip only 35-40° to the south or south-west. These bedding planes or the old water courses may form the limits of the ore pockets but there is little, if any, essential difference in the character of the rock on the walls and in the ore-bodies.

On the plank level there is no ore in the crosscut, but it is good in the drift along the alleged vein. In the Rivera workings there is one drill hole and there is also a tunnel which runs in 10 or 15' below the open adit from which the Morning Star people raised up into the pit. The recent drill holes on the Pure Gold Claim are

located 60' back east along side line from stake on road and then north 5° E for 20' to 1st drill hole and 78' to 2nd drill hole.

Morning Star drill hole bears from top of west raise S 35° West distance 50'.

The ore showings as noted in my rough plan must be revised and in the tunnel at west end of workings this runs N. 15° West and dips 35° to the west and there is no connection between the ore showing in these workings and that in the trespass pit. Ore in west workings is low grade and reported to have pinched out a short distance below surface but some pillars of good ore were left in place and it is highly siliceous.

Between the main workings and the west workings the foot wall of the pit is formed by the breccia of the Mogul fault which at this point strikes N. 60° West and dips only 30° to southwest, but at other points it is much steeper. Pure gold was supposed to have worked out its best grade of ore by June of 1944.

Proof of split apex will be made by my samples and photos of vein at east end of pit, testimony of Henderson, Iverson and Forcey re outcrop of ore near center of pit and my photos and samples of outcrop at west end near raise.

At north-east corner of Morning Star ore bin note that there is a drill hole in which a little ore was found at a depth of 100' (put in Section A-A).

At this point the breccia of the fault cuts thru with strike N. 45° West and dip about 60° to Southwest. (See photo).

The open cut and east adit starts near to the Morning Star ore bin and chute and on its southside it is undercut in the wall for a length of 15' and to south for 10' and depth 8'. Direction is N. 70° W as per map. There was good ore in this cut which averaged about 0.85% W O₃ and then it was poor and spotty, and pinched out in the tunnel and drill hole so that there was no connection between this opencut pocket and the pocket which starts near the trespass pit. The foot wall of the ore here was the fault breccia which was noted along the north edge of the cut and here had a dip of 65°.

The ore in the pocket at the east end of the cut and also at other points seemed to have made largely along cross faults or fractures striking north and south. Note changes in elevation of open cut which was about 88 where tunnel took off and down to 80 at east end and there was still ore in the bottom.

Note another small pocket of ore which was found in surface 70' west of corner and 100' south of that point. Note drawing of opencut. etc. in Note Book from map.

The plank level is barren of ore for 31' in from the portal which is 47' south of side line and it follows in a well defined water course or cross fracture to a wall along which a drift was run as shown on map with strike N. 65° west and dip 55° to the south and along this wall there was a good body of ore which in places had a height of 10' and swelled to a width of 12', but did not go down to the intermediate level in which we found with the lamp only little showings of ore. This ore could not have been connected with the ore in the open-pit. unless the hanging wall of the vein had flattened out in the dip.

Both hanging and foot wall appeared to be dark limestone of similar character.

On intermediate level they are now drilling on a little streak of ore and this hole starts 45' south of the line.

The lower adit cuts in south thru the fault breccia to the drift which is run in limestone with breccia along the north wall and here the fault seems to strike N. 65° W to dip 55° to the south-west. The hanging wall of the breccia is all highly silicified limestone (or quartz) and the bedding planes of the limestone may have dipped 35° to the south or southwest but there are many slips or planes in it which are now almost vertical and some of these even dip a little to the north.

Morning Star people or Rivera first noted outcrop of scheelite along the side line early in '43 and Stevens came out to mark the line in August '43 when it was noted that the greater part, but not all of the outcrop (now destroyed by the open pit) was located on the Pure Gold Claim. Stevens disclaimed all knowledge of ore but Rivera and others knew that this outcrop was scheelite and planned to negotiate with Molson for the use of the lower adit so that they could mine it in the Morning Star Claim. No arrangement of this nature was ever made and after Pennybaker first came out in Feb. '44 the Pure Gold people claimed that this showing was the apex of a vein, all on their side of the line, and hence giving them extra-lateral rights to all of the ore which the vein might be found to contain.

When marking in ore on plan, show that ore extends from east end of vein (just beyond east end of pit) for 30' altho it did not come to surface over all of this distance. Then there was a break or very narrow vein for some 30' when ore came in again and swelled to width of 30' or more while its south limit was 4 or 5' across the side line on the Morning Star. This wide pocket of ore had a length of some 50' after which it

swung back to the north (near the west raise and the outcrop from that point and over the west workings (which are in a cross facture) was entirely in the Pure Gold.

RE ASSAY MAP

Samples 8 - 22 seem to have been taken by Ewing on April 10, 1945. Ewing appeared to be quite sick when we saw him in Tucson on March 23rd, but may have gone to mine before Flag and I were there on April 25, 27.

All hanging wall samples appear to have been taken 10' south of line but actually this rim is caved or very dangerous from point 250 to 320 near which last point we sampled (check) close to line and got good results between Ewing's 14 and 15.

Hanging wall on Morning Star side of line lamped by Henderson and Forcey close to 12 and 13.

Pennybaker had told us in Tucson that he had sampled hanging wall and found no ore. (Much loose over-burden).

To mine 7825 tons of ore from pocket as outlined on assay map the mining would have been carried on to an average depth of 20' since area = $100' \times 40 = 400$ sq. ft. per ft. of depth and specific gravity may be figured at 10 to 11 cu. ft. per ton. The total volume of material mined or caved is very much greater but there is still a large mass of broken ore and waste left in the bottom of the pit.

Assay map and record of samples makes no reference to quartz vein, but only to "channel".

May 9th, 1944

Mr. Joseph Jenckes, Jr.
c/o Ellinwood & Ross
Title & Trust Building
Phoenix, Arizona

Re: Morning Star Mine

Dear Mr. Jenckes:

At your request I visited and examined on May 7th the workings described below and herewith beg to submit the following report concerning the trespass on the Morning Star Mining Claim by Messrs. E. H. Molson and Ewing operating on the Pure Gold Claim. Attached is a print of a map captioned Exhibit A.

There is no dispute as to the location of the north side line of the Morning Star Claim which is also the south side line of the Pure Gold Claim, nor as to the fact that Molson and Ewing have enlarged the open cut on the Pure Gold Claim to extend across this line for a short distance on the surface and to a greater extent below (see sketch of Section) and have removed waste rock and scheelite ore from the Morning Star Claim alleging that in so doing they were following down the apex of a vein of scheelite which had been found and developed on the Pure Gold Claims.

In my opinion this claim is not founded on fact. The legal rights of the various parties will depend upon the nature of scheelite deposit and the existence of a true apex as same has been defined in interpreting the so-called Apex Law.

Mr. Joseph Jenckes, Jr.
Re: Morning Star Mine
May 9th, 1944

While I had no opportunity to study the geology of this area it appeared that the surface rock on both claims is largely limestone, with some quartzite, overlying a basal formation of granite in which are found intrusions of diorite and veins or ledges of quartz.

The geology of some of the ore deposits of this district was studied by Professor William B. Blake who made a report in April, 1906. The existence of surface deposits of scheelite on the Morning Star and Maudine Claim (lying 1/2 mile southeast of the Morning Star) was noted in a report made by Carter and Smith, Canadian Mining Engineers in June, 1913 and further development was then recommended. They make no mention of any such ore on the Pure Gold Claim so that it may be inferred that no such discovery had been made up to that date. In any event there was very little mining activity anywhere in this district until war time requirements increased the demand for tungsten. Since 1940 the scheelite deposits on the Morning Star have been worked first by the Riviera Brothers and subsequently by the Morning Star Mining Company, while the similar deposits on the Pure Gold Claims have been worked by Molson and Ewing with the assistance of loans from the R. F. C.

Recent shipments of ore averaging about 2% W.O₃. are said to have been made to the stock pile in Tucson at the rate of 40 - 50 tons per day from the Pure Gold Claim and 20 - 30 tons per day from the Morning Star, all work being done at or near the surface as shown on Map (Exhibit A) and very close to the common side line of the Morning Star

Mr. Joseph Jenckes, Jr.
Re: Morning Star Mine
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and Pure Gold Claims. Both operations are continuing at present.

NATURE OF THE DEPOSITS

The scheelite ore occurs in kidneys and pockets located in an erratic and irregular manner in the limestone and sometimes associated with quartzite or quartz. The limestone has been shattered and cross-fractured to a greater or less extent and the more soluble constituents have been dissolved out leaving many vugs and sometimes large open fissures.

The scheelite deposits are of the replacement type resulting from the circulation of ore bearing solutions which have impregnated the soluble rocks and deposited higher grade ore in certain sections with a gradual fading out of the values into the barren material. While some similar replacement deposits do occur in well defined veins yet it is a characteristic of many of them,--as in this particular case,--that the size, shape and location of the pay ore is irregular and erratic,--that there are no well defined walls and no veins on which the strike, dip or apex could be determined.

The scattered location of the workings shown on Exhibit A will illustrate this point and my opinion is confirmed by the fact that so far none of the ore showings are known to continue with depth or have been found in the tunnels at the points where they should have been encountered if any regular dip to the southwest had persisted. None of the showings on either claim, in so far as they have been developed to date, manifest any of the characteristics of a true vein, lode or

Mr. Joseph Jenckes, Jr.
Re; Morning Star Mine
May 9th, 1944

ledge as intended in Title 30 U.S.C.A. Section 26.

LEGAL CONSIDERATION

Even if it be admitted by the trespassers that there is no true vein, lode or ledge (these terms having been interpreted by the courts to be synonymous) they may argue with some force that at this particular point they have been working out from the open cut a body or kidney of ore which apparently outcropped on their ground and which has extended with depth across their side line and thus given them extralateral rights.

Against this it could be argued (1) that the existence of an apex is dependent upon walls of the vein or ore body (at least one wall) and that in this case no wall can be recognized; (2) that the right to follow the ore down across a side line is dependent upon the dip of the vein and that in this case no dip can be recognized. As a matter of fact it seems to me that the particular kidney of ore on which the work is being done has merely swelled out toward the south at a point about 15' below the surface over a length of about 30' and a height of about 15' and extending south across the side line for a maximum distance of about 10 - 12'. Apparently the limits of this ore pocket are now pretty well defined and not more than 50 to 100 tons of additional ore is likely to be taken from under the Morning Star Claim. The total quantity which has been removed to date, should not exceed 200 tons with an average content of perhaps 2% $W.O_3$ having a gross value of \$60.00 per ton @ \$30.00 per unit, but a much lower net value to the shipper.

Mr. Joseph Jenckes, Jr.
Re: Morning Star Mine
May 9th, 1944

Nothing in the Apex Law gave the Pure Gold people any legal right to trespass on the surface of the Morning Star Claim where they have extended the rim of the pit across the line and removed a small quantity of rock. For this trespass they are certainly liable.

There is also no question but that the burden of proof is on the trespasser to show as a matter of fact that they have followed down on the dip of a vein as defined by law and were entitled to mine out the ore under the Morning Star Claim.

On the one hand I understand that the courts have held that without dip and walls there can be no vein or apex rights and that "impregnation of ore diffused irregularly thru a broad zone" can have no apex but on the other hand they have also held that "a body of ore may be followed down as if it had an apex" and in this particular case I can visualize that there might be room for both technical and legal disagreement as to the application of the law and the respective legal rights of the parties involved.

RECOMMENDATION

Therefore, as a practical matter and in view of the fact that so small a tonnage of ore has been or is likely to be mined from the Morning Star I do not believe that it would pay either party to engage in litigation and I would suggest that, without waiving any legal rights, the case might be amicably settled thru an acknowledgment of the trespass and an agreement to pay the Morning Star Company a certain

Mr. Joseph Jenckes, Jr.
Re: Morning Star Mine
May 9th, 1944

amount per ton for all ore mined or to be mined from across the vertical downward projection of their side line and not to work across that line at any other point except by special permission. Even if the Morning Star should be given title to the small tonnage of ore still remaining on the south side of the open pit, they could not well mine this without going to a substantial preliminary expense or trespassing on the Pure Gold Claim and it appears to me that this situation is one which should be met by the exercise of common sense and good business judgment on the part of both parties.

Yours very truly,



Enclosure
Map Exhibit A

Jenckes said that Gov. [unclear] had been taken
by the [unclear]

10/4 Bill Emory E. & R. called re said [unclear]
[unclear]

on

Training Journal of Aug 30, 44 up to 20

Inventions, Inventions & Technical Reports in the hands
& Training Star Unit on file at the R. J. H.
Office of Training of Aug in London

Report was made of Inventions & advised
Evans to try to secure a copy & send me also answer
to complaint

Remember from reports defendants & Evans
will advise date of trial before which I should

hand to (1) Examine above mentioned reports
(2) Big Patent Survey notes for Fred Coffey
(3) Re explain claims & carefully examine reports

& get date in case of me

(4) Check up on law & define of term etc -
& use illustration of trial before a jury
Coffey + Inven City named & Evans

No. 401 Co

Phoenix, Arizona,
April 28, 1945.

CHAS. A. DIEHL

ARIZONA ASSAY OFFICE

Mail: P. O. Box 1148

815 North First Street

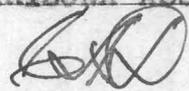
Phone 3-4001

THIS CERTIFIES That samples submitted for assay by Mr. W. M. Colvocoresses. contain as follows per ton of 2000 lbs. Avoir.

MARKS	SILVER		VALUE (OZ.)	GOLD		VALUE (OZ.)	TOTAL VALUE Of Gold & Silver	PERCENTAGE			REMARKS
	Ounces	Tenths		Ounces	Hndths			SILICA	ALUMINA	WO ₃	
<u>M.S.</u> 1							92.40	.50	1.88		
2							94.92	.50	.97		
3							3.50	31.54	Trace		Iron oxide & alumina
4							71.92	6.52	.01		
5							91.10	2.81	.95		
6							49.32	23.10	None		
7							72.22	12.85	.49		

Charges \$ 38.50

Assayer ARIZONA ASSAY OFFICE



SAMPLES FROM MORNING STAR-PURE GOLD

(7 Samples Taken April 26th & 27th)

X #1

Taken from ore showing close to surface at east end of open pit, on south (Morning Star) side of common side line. Width 3'.

W O ₃	-----	1.88
CaO	-----	0.50
SiO ₂ (Insol.)	-----	92.40

X #2

Same as #1, but taken on (north) Pure Gold side of Line.

W O ₃	-----	0.97
CaO	-----	0.50
SiO ₂ (Insol.)	-----	94.92

#3

From hanging wall rock of alleged vein at extreme south end of plank level, crosscut being over 40' distant from the portal of the plank level. Sample shows no ore.

W O ₃	-----	Trace
CaO	-----	31.54
SiO ₂	-----	3. ⁵³ 00

#4

From limestone ^{breccia} on foot wall of alleged vein taken from lower adit between the third and fourth shoots and very close to the breccia on the fault gouge along which most of this lower drift is driven except at extreme west end. Sample shows no ore. ^{chute}

W O ₃	-----	0.01
CaO	-----	6.52
SiO ₂	-----	71.92

#5

X Cut on surface from 1 to 2' south of common side line near raise

W O ₃	-----	0.95
CaO	-----	2.81
SiO ₂	-----	91.10

#6

Same location as #5, but 4 to 5' south of side line as shown on Photo #3.

W O ₃	-----	None
CaO	-----	23.10
SiO ₂	-----	49.32

#7

Cut by Henderson 1 to 3' south of side line ^{slightly} and almost on edge of pit about 8' east of #5.

W O ₃	-----	0.49
CaO	-----	12.85
SiO ₂	-----	72.22

SAMPLES FROM MORNING STAR-PURE GOLD

(7 Samples Taken April 26th & 27th)

#1

Taken from ore showing close to surface at east end of open pit. on south (Morning Star) side of common side line. Width 3'.

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SiO ₂ (Insol.)	-----	94.92

#3

From hanging wall rock of alleged vein at extreme south end of plank level. crosscut being over 40' distant from the portal of the plank level. Sample shows no ore.

W O ₃	-----	Trace
CaO	-----	31.54
SiO ₂	-----	3.00 <i>J.V.D</i>

#4

From limestone on foot wall of alleged vein taken from lower adit between the third and fourth shoots and very close to the breccia on the fault gouge along which most of this lower drift is driven except at extreme west end. Sample shows no ore.

W O ₃	-----	0.01
CaO	-----	6.52
SiO ₂	-----	71.92

#5

Cut on surface from 1 to 2' south of common side line near raise

W O ₃	-----	0.95
CaO	-----	2.81
SiO ₂	-----	91.10

#6

Same location as #5, but 4 to 5' south of side line as shown on Photo #3.

W O ₃	-----	None
CaO	-----	23.10
SiO ₂	-----	49.32

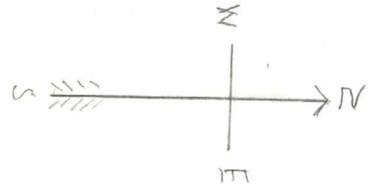
#7

Cut by Henderson 1 to 3' south of side line and almost on edge of pit about 8' east of #5.

W O ₃	-----	0.49
CaO	-----	12.85
SiO ₂	-----	72.22



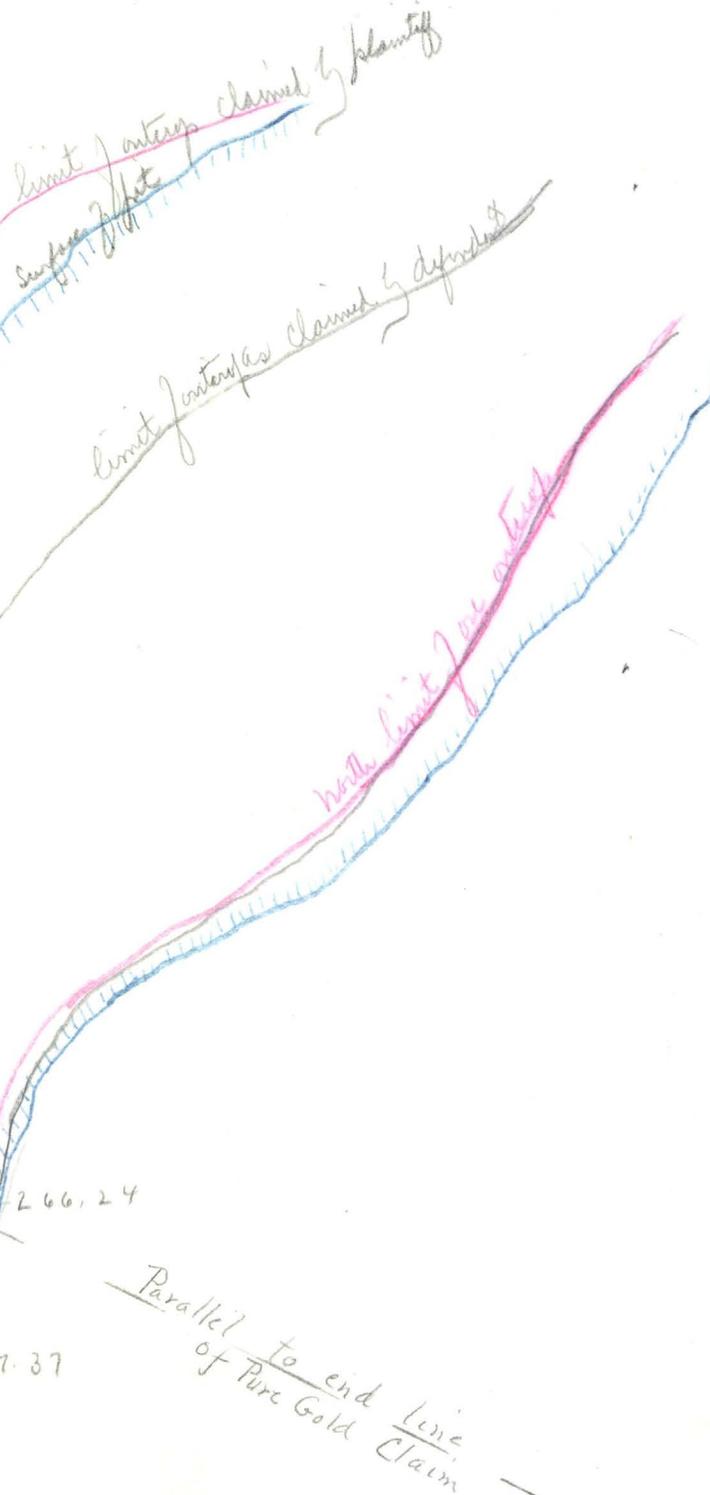
Common side line of Morning Star
Pure Gold

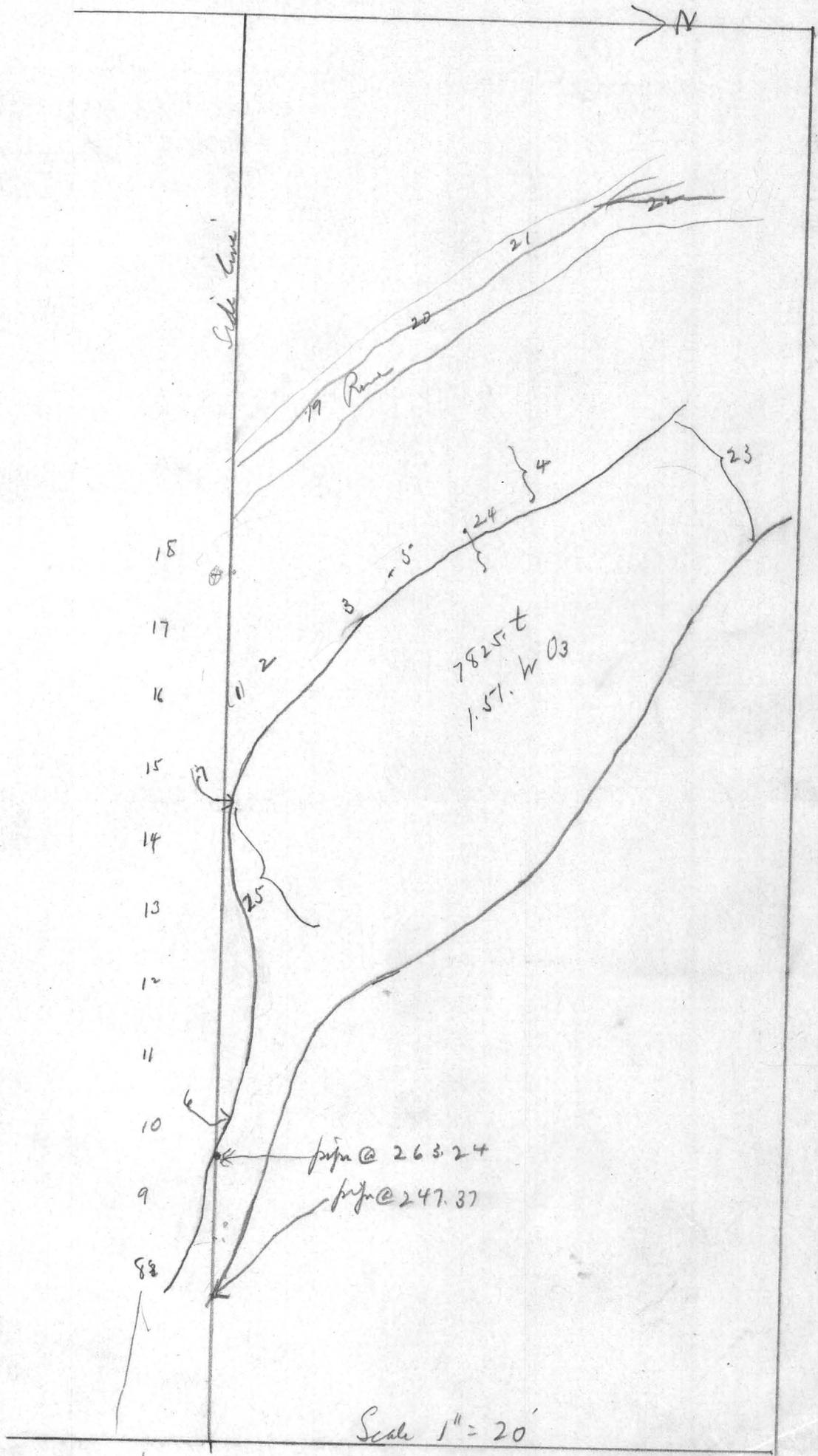


East limit of extra lateral right of defendant as determined by split of line

Area of disputed rights

East limit of extra lateral right as claimed by defendant





HANGING WALL SAMPLES

No.	ROCK	WO ₃	REMARKS
1	Fresh, black limestone	0.36	
2	Fresh limestone	0.15	
3	Limestone	0.36	
4	Fresh limestone	0.16	Across about 15'
5	Limestone	0.32	
6	Fresh limestone	0.35	Across about 3'
7	Limestone	0.10	
8	"	0.03	
9	"	0.04	
10	"	0.02	
11	"	0.03	
12	"	0.02	
13	"	0.01	
14	"	Tr.	
15	"	0.04	
16	"	0.03	
17	"	Tr	
18	"	0.02	
19	"	0.05	
20	"	0.03	
21	"	0.07	
22	"	0.04	

VEIN SAMPLES			
23	Limestone	2.14	20' Channel
24	"	3.05	5' Channel
25	"	1.14	20' Channel

Samples 1-7 taken 3/26/44 by E.N.P. Assayed 3/30/44
 Samples 8-22 " 4/10/45 by E.J.E. " 4/12/45

Jacobs Assay Office, Tucson, Arizona

SKETCH SHOWING SAMPLES OF HANGING WALL
 AND VEIN

Scale 1" = 20'.

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11	"	0.03	
12	"	0.02	
13	"	0.01	
14	"	Tr.	
15	"	0.04	
16	"	0.03	
17	"	Tr	
18	"	0.02	
19	"	0.05	
20	"	0.03	
21	"	0.07	
22	"	0.04	

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HANGING WALL SAMPLES

VEIN SAMPLES

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2	Fresh limestone	0.15	24	"	3.05	5' Channel
3	Limestone	0.36	25	"	1.14	20' Channel
4	Fresh limestone Across about 15'	0.16				
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SKETCH SHOWING SAMPLES OF HANGING WALL AND VEIN

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HANGING WALL SAMPLESVEIN SAMPLES

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