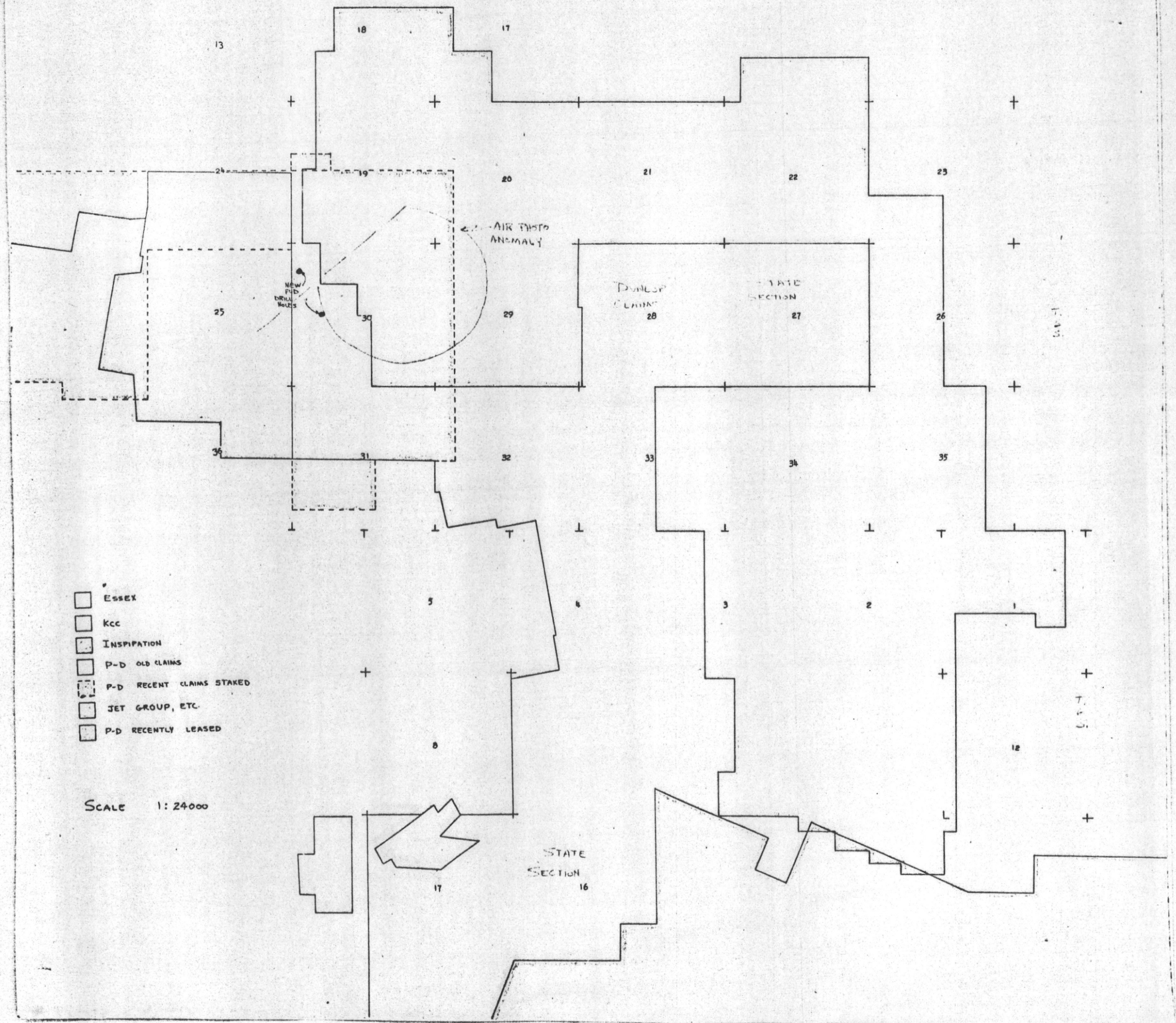


AIR PHOTO ANOMALY
NEW PUD DRILL HOLES
DUNLOP CLAIMS
STATE SECTION
STATE SECTION
ESSEX
KCC
INSPIRATION
P-D OLD CLAIMS
P-D RECENT CLAIMS STAKED
JET GROUP, ETC.
P-D RECENTLY LEASED
SCALE 1: 24000

Grover 3

VERITY & SMITH
ATTORNEYS AT LAW
SUITE 902 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701

VICTOR H. VERITY
LEO N. SMITH
JOHN C. LACY
DESMOND P. KEARNS

AREA CODE 602
TELEPHONE 622-7445

SXM

JUL 31 1973

RECEIVED

July 30, 1973

COPY

Mr. Fred E. Ferguson, Jr.
Evans, Kitchel & Jenckes
Attorneys at Law
363 N. 1st Avenue
Phoenix, Arizona 85003

Re: Down-hole Directional Surveys

Dear Fred:

Pursuant to our conversation of July 27, 1973, Essex International, Inc. has advised me that Parsons Surveying Company will be an acceptable contractor for the performance of the down-hole directional surveys previously requested by your client, Phelps Dodge Corporation.

In order to maintain the impartiality of the contractor, I would request that we be informed of your client's contacts with Parsons and given an opportunity to accompany any presentation of the request for the performance of the job. I would also request that Essex be furnished copies of correspondence between Phelps Dodge or your firm and Parsons Surveying Company relative to the survey.

Very truly yours,

John C. Lacy

JCL:lh

cc: Paul I. Eimon

VERITY & SMITH
ATTORNEYS AT LAW
SUITE 902 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701

VICTOR H. VERITY
LEO N. SMITH
JOHN C. LACY
DESMOND P. KEARNS

AREA CODE 602
TELEPHONE 622-7445

June 12, 1973

SXM
JUN 13 1972
RECEIVED

COPY

Mr. Fred E. Ferguson, Jr.
Evans, Kitchel & Jenckes
Attorneys at Law
363 North First Avenue
Phoenix, Arizona 85003

Re: Down-hole Directional Surveys

Dear Fred:

Sperry-Sun Company is acceptable to Essex International, Inc. to conduct down-hole directional surveys.

Confirming our agreement of April 30, 1973, Phelps Dodge Corporation will pay for the conduct of the survey and both Phelps Dodge and Essex will bear their own costs in providing observers for the conduct of the survey. The above procedure may be used for the conduct of a survey on drill hole ES-5 as well as drill holes ES-9 and ES-20.

We would request that the initial contact made with Sperry-Sun to explain the nature and parameters of the survey be made jointly by personnel of Phelps Dodge and Essex to insure that a contractor is not given the impression that he is working for one party. We would also request that all field notes and materials prepared in the conduct of the survey be prepared in duplicate with one copy furnished to each party.

Very truly yours,

John C. Lacy

JCL:lh

cc: Paul I. Eimon
Howard Lanier

AFFIDAVIT OF PERFORMANCE OF DRILLING AS LOCATION WORK

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

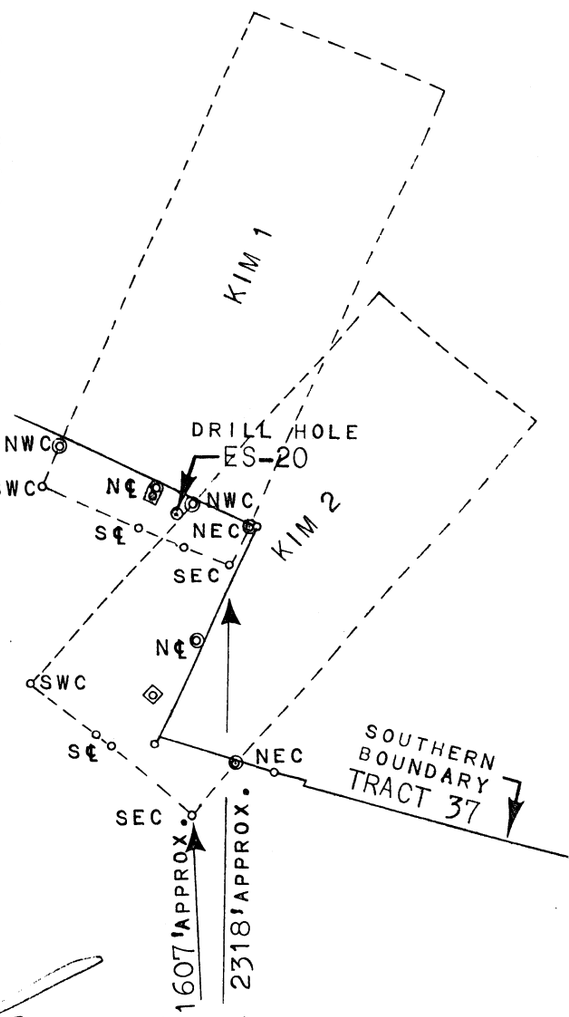
E. GROVER HEINRICHS, being duly sworn, deposes and says: that he is Assistant Manager of Exploration and authorized agent of ESSEX INTERNATIONAL, INC., the locator of the unpatented lode mining claims situated in the Lone Star Mining District, Graham County, Arizona, the location notices of which are of record in the office of the Recorder of Graham County, Arizona, as follows:

Name of Claim	Book	Page	Date Located	Date Recorded
Kim 1	191	486	Dec. 13, 1972	Dec. 14, 1972
Kim 2	191	487	Dec. 13, 1972	Dec. 14, 1972

That the following described drilling was done on Essex' behalf as location work pursuant to the provisions of A.R.S. §27-203; that the claims described above are a group of contiguous claims and so located that the entire area of all 2 claims are contained within the exterior limits of a square not in excess of 3,000 feet long by 3,000 feet wide; that the location work for the group was performed by drilling with diamond and rotary drilling equipment capable of collecting a continuous core of bedrock at least seven-eighths inches in diameter from a hole at least two inches in diameter at the location shown on the plat to a depth of >100 feet; that the said drilling was performed by Boyles Bros. Drilling Co. at a cost in excess of $500.00 on the date of JAN. 2, 1973 thru MARCH 31, 1973.

That the drill hole has been marked with a wooden post at least 4 inches in diameter and at least 48 inches in height above the ground placed within 5 feet of hole, firmly embedded in the ground, and that there has been attached securely to such marker a notice containing the name of the claim on which located, the names of the contiguous claims for which such hole is claimed as location work, the locator, the depth of such hole and the dates on which such hole was drilled.

There is attached hereto and made a part of this Affidavit a plat drawn to scale showing the boundaries of each of the above-described claims and location of the drill hole or holes.



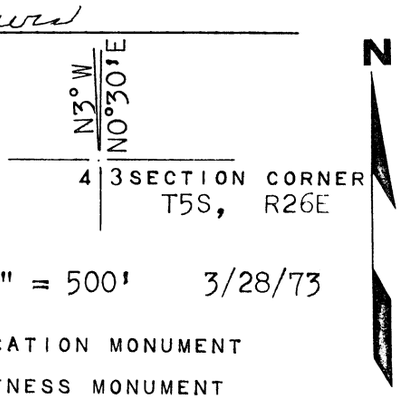
E. Grover Heinrichs

Subscribed and sworn to before me this 27th day of March, 1973.

Notary Public

My commission expires:

Nov. 19, 1976



SCALE: 1" = 500' 3/28/73

◘ LOCATION MONUMENT

◎ WITNESS MONUMENT

AFFIDAVIT OF PERFORMANCE OF DRILLING AS LOCATION WORK

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

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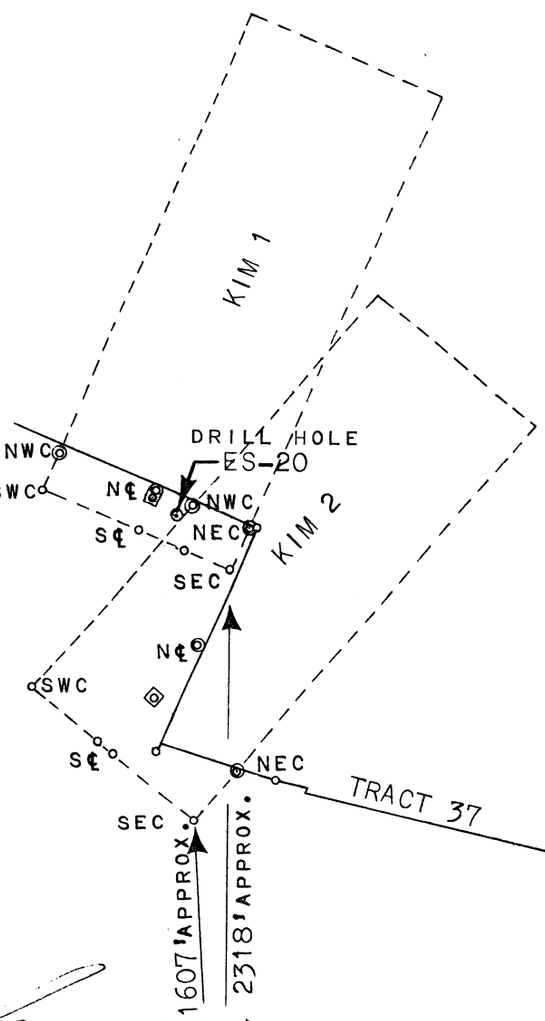


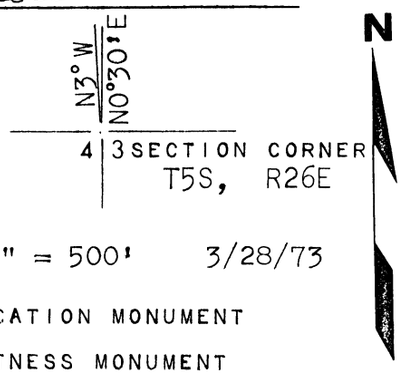
E. Grover Heinrichs

Subscribed and sworn to before me this 27th day of March, 1973.

Leo A. Davis
Notary Public

My commission expires:

Nov. 19, 1976



SCALE: 1" = 500' 3/28/73

◘ LOCATION MONUMENT

◎ WITNESS MONUMENT

T.5S., R.26E., G.&S.R.M.

MINERAL SURVEY No. 4632 ARIZONA

(INFO. FROM U.S. B.L.M. AND J. YANEZ LAND SURVEYOR)

NE 1/4 Sec. 32

NW 1/4 Sec. 33

NE 1/4 Sec. 33

SE 1/4 Sec. 32

SW 1/4 Sec. 33

SE 1/4 Sec. 33

TRACT 36

TRACT 37

FOOTHILL 46

BIRTHDAY #10

BIRTHDAY #11

BIRTHDAY #5

BIRTHDAY #6

FOOTHILL 33

FOOTHILL 34

FOOTHILL 35

Sandwash 2

Bohemia 9

Pasoford #10 Sur. No. 4579

Dos Pobres #23 Sur. No. 4579

PASOFORD #9

FOOTHILL #37

PASOFORD #8

PASOFORD 7

PASOFORD 6

BOHEMIA 3A

BOHEMIA 3

BOHEMIA 2

BOHEMIA 1

FOOTHILL #43

FOOTHILL #44

TRACT 37

1/4 Cor. Secs. 32 & 33

1/4 Cor. Secs. 33 & 34, T.5S., R.26E.

DATE: 12/72
COMPILED BY

ESSEX

ESSEX INTERNATIONAL, INC.
1704 WEST GRANT RD., TUCSON, ARIZONA 85705
PHONE (602) 624-7421

True Meridian

0 50 100 200 300 400 500 600 700 800 900 1000
Feet

Magnetic Declination, 14°E.

R.L.P.

EXPENDITURE ESTIMATE 12-28-72

BULLDOZER & LOADER		1156.40
ES-9	NOV	5445.00
	DEC	13188.50
ES-11	NOV	842.71
	DEC	3468.70
ES-12, 13, 15 (METLER)		6890.52
ES-14		4132.45
ES-16		6711.25
ES-17		5205.00
ES-18		1560.00
ES-19, 19A, 20		3150.00
ES-21		2000.00
		53,750.53

LANGTON, Jackson Maurice

Address: 131 Columbine, Morenci, Arizona 85540
Degrees: B.S. 1962, Oklahoma University; M.S. 1963, Oklahoma University
Position: Chief Geologist, Morenci Branch, Phelps Dodge Corporation

Professional Experience:

1962 - 1963, Graduate work, Oklahoma University
1963 - 1964, Graduate work and teaching assistant, University of Missouri at Rolla
1964 - 1966, Graduate work and Consultant for Pick Enterprises at Stanford University
Jan. 1966 - Sept. 1966, Geologist, Pick Enterprises, Saratoga, California
Sept. 1966 - April 1969, Geologist, Phelps Dodge Corporation, Morenci, Arizona
April 1969 - Present, Chief Geologist, Morenci Branch, Phelps Dodge Corporation

Publications: 2

Contributions: Plausible theories for structural control and ore genesis for the Phelps Dodge Morenci, Metcalf, and Safford ore deposits. (Company reports, hopefully to be released at a later date.)

Sponsors: Charles F. Park, Jr.; John M. Guilbert; Raymond W. Ludden, Jr.

LUDDEN, Raymond Woodbury, Jr.; B.S. 1948, Min. Eng., University of Arizona; M.S. 1950, Geology, University of Arizona. Address: Drawer 1217, Douglas, Arizona 85607. Position: Chief Geologist, Western Exploration Office, Phelps Dodge Corporation. Professional Experience: June 1949-June 1952, Consolidated Coppermines Corporation; June 1952-Dec. 1952, American Metal Company; Dec. 1952-Present, Phelps Dodge Corporation. Publications: Numerous confidential corporation reports and maps. Candidate's most important contribution: The application of the science of economic geology in the exploration for and development of mineral resources. Sponsors: John Hope, Kenyon Richard, E. N. Pennebaker.

LANGTON, Jackson Maurice

Address: 131 Columbine, Morenci, Arizona 85540
Degrees: B.S. 1962, Oklahoma University; M.S. 1963, Oklahoma University
Position: Chief Geologist, Morenci Branch, Phelps Dodge Corporation

Professional Experience:

1962 - 1963, Graduate work, Oklahoma University
1963 - 1964, Graduate work and teaching assistant, University of Missouri at Rolla
1964 - 1966, Graduate work and Consultant for Pick Enterprises at Stanford University
Jan. 1966 - Sept. 1966, Geologist, Pick Enterprises, Saratoga, California
Sept. 1966 - April 1969, Geologist, Phelps Dodge Corporation, Morenci, Arizona
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Bill Bowen

Geologist at the Phelps Dodge-Safford deposit. Probably in his early 30's. Was a part-time policeman in Phoenix for ten years while he was getting his degree in geology. In the field, Bowen is stocky, was quite aggressive in the Essex-Phelps Dodge encounter and was adequately arrogant. He appeared to be somewhat impetuous and willing to make snap judgments, and in general was quite disdainful of ~~Sx~~ Essex in that encounter.

Skip Clark

Mine Manager, Phelps Dodge Deposit, Safford, Arizona. Skip reportedly originally was trained as a geologist and has held various positions for other companies. He has not been with Phelps Dodge long and has been confined to the Safford deposit. Skip is small, very mild mannered, quiet, almost apologetic in his actions. While in Safford he has been very unobtrusive and has done a good job of maintaining a very low profile for Phelps Dodge in spite of all the money they have spent there.

In the Essex-Phelps Dodge encounter on Dec. 5, Bill Bowen was giving all the orders. Skip Clark was tagging along with the other workers. Skip Clark did complain that Bill Bowen has not been able to do his underground mapping while he was watching Essex during the previous six weeks.

AFFIDAVIT

State of Arizona)
) ss.
County of Pima)

E. GROVER HEINRICHS, being first duly sworn, deposes and says:

That he is the Assistant Exploration District Manager of Essex International, Inc., the plaintiff in the foregoing action.

That on or about 6:30 A.M. on December 15, 1972, a drill rig employed by Essex International, Inc. for the purpose of drilling to determine possible mineral values of real property which property is designated in the records of the Arizona Office of the Bureau of Land Management as Tract 37 in the Lone Star Mining District, Graham County, Arizona.

That at approximately the time stated above, an individual identifying himself as having authority from Phelps Dodge Corporation denied entry upon the property stating that "I have a gun and know how to use it." The individual was observed to have in his posession a fire arm.

That at approximately 6:45 A.M. the same individual approached the position of the drill rig and fired a pistol once into the air.

That at 7:45 A.M. a bull dozer approached the crest of the hill approximately 200 feet away from the drill rig, blocking any attempt to move the drill rig further upon the property.

That at 8:05 A.M. Mr. Bill Bowen, a Phelps Dodge geologist, and Mr. Skip Clark, a Phelps Dodge engineer, stated that if the drill rig was not removed from the property within a reasonable length of time, the bull dozer would be used to push the drill rig into the nearby creek or wash.

That at this point, agents and employees of Essex International, Inc. removed the drill back to a position on the Kim 1 unpatented lode mining claim located by Essex International, Inc. on December 13, 1972.

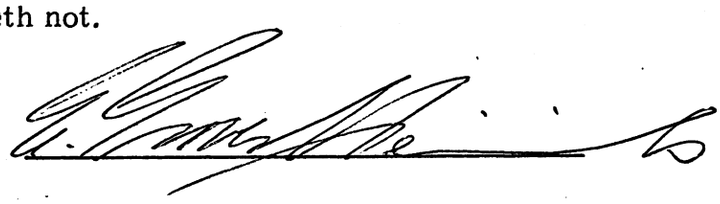
That Mr. Bowen and Mr. Clark again approached in a threatening manner followed by a bulldozer (D7 Tractor) that drove directly at the Essex employees and drill rig and stopped within two to three feet of the drill rig.

That Mr. Bowen stated that the drill rig was to be removed within 15 minutes or be destroyed by the bulldozer.

That the Essex employees then withdrew to a point south of a berm dug by Phelps Dodge.

That Mr. Bowen subsequently approached employees of Essex and advised them not to go upon the Kim 2 unpatented lode mining claim located by Essex on December 13, 1972 claiming a dominant right through the Scorpian claim located by Phelps Dodge.

Further your affiant sayeth not.



The foregoing instrument was acknowledged before me this 15th day of December, 1972 by E. Grover Heinrichs, the Assistant Exploration District Manager of Essex International, Inc.

Barbara J. Desens
Notary Public

My commission expires:
April 4, 1975

0537 PD vehicle moves off pad, heads North out of area.

0548 PD vehicle returns to pad above 14.

0630 PD man denied us entry by force. He had a gun and threatened us if we proceeded to planned drill pad. Communication by radio from Grover--the PD (?) man said, "I have a gun and I know how to use it."

0643 Guard ordered the rig not to raise the mast.

0705 Second PD truck arrives at hilltop pad. Guard, named "Hank" walks uphill, fires pistol once into air. Second truck comes down hill, and a second guard gets out. Both vehicles blue pickup trucks.

0708 Guard, Hank Briggs, and second man, Clifford Willis, of O. B. Willis Co., order rig off property by order of Phelps Dodge Co.

0712 Guards depart. Started engine of rig for purpose of raising mast.

0717 White Dodge pickup arrives at rig, man gets out and approaches group. Man is Bill Bowen, PD geologist, who wants to make sure we know that we are on Tract 37. We assure him we are aware of that fact. He then informs us of the existence of claim "Scorpion" which he says exists between Tract 37 and Essex claim "D&L."

0725 Pale green pickup approaches, man gets out and proceeds to rig. Man is Skip Clark, Manager of PD operation, says he is moving a dozer in.

* 0715 -LATE ENTRY- Mast raised.

0745 Bull dozer and blue Ford pickup approaching

0750 Paul Eimon and Howard Lanier arrive.

Dec. 14

1835 Observed vehicle on hill to the North above Hole #14.

1930 PD vehicle moved to site overlooking #17.

1947 PD vehicle leaves surveillance of #17, heads East.

1955 PD vehicle seems to reappear near farthest and lowest Joy rig.

2048 Second PD vehicle approaches from North, starts down road to 14. I proceed to intercept, and he leaves, takes station on ridge between 14, 17. On way down hill, see first PD vehicle traveling very slowly up PD hiway past 16.

2102 Second vehicle leaves ridge to East traveling with only parking lights. Disappears.

2305 First vehicle returns to pad above 14 from above 17. Not seen going to 17 initially. Uses lights now.

0010 PD vehicle moves about 1 car length on pad, turns slightly to left. Keeps lights off.

0100 PD vehicle still there.

0140 PD vehicle still there as moon sets.

0200 PD vehicle no longer visible in dark.

0515 PD vehicle leaves spot above 14, travels to ridge between 14, 17, then to point on basalt above 17.

0526 PD vehicle leaves site above 17 and returns to pad above 14.

0805 Bill Bowen, Skip Clark, Cliff Willis and one other ordered us off the property under threat of bringing dozer and front end loader down and give one warning and shove rig into creek. In order to avoid damage to equipment, we are pulling back. Most was lowered.

0815 Clark Hirshi of Boyles arrived to say that at 7:40 he was called by phone by Bill Browen who threatened to destroy the Boyles drill rig unless he ordered it off PD property.

Essex then moved drill rig to KIM 1 on the North of the Burm. As the drill mast was raising, Bill Bowen, Cliff Willis and others began walking to the Essex drill ahead of a PD dozer advancing with blade down.

Bowen identified himself as a PD agent and said the drill must be moved behind the burn in 15 minutes or he would order the dozer operator to push the rig into the wash.

He then informed P. I. Eimon, Ken Jones and E. G. H. that the land in dispute (Tract 37) was part of the exchange and as PD agent he was ordering us off. He said PD had old mineral rights and was exchanging this property. He stated "We claim mineral ownership of this ground now." He refused to say the burm was the boundary to Tract 37. Time 8:30

Bill Bowen stated that the Kim 2 was not located yesterday and he further advised that we (Essex) should not explore the Scorpian.

/100/

Please prepare file
as follows:

Yellow

Safford Project
Tract 37 (Kim Kaper)
Misc. clippings
Affidavits, Scorpian Notice

December 15, 1972

6:25 am A front end loader leased to Essex International, Inc. opened a roadway in the earthen barricade blocking access to a portion of the Kim 1 mining claim and Tract 37. Led by E. Grover Heinrichs, Bob Helming, and Bill Brown on foot, the loader proceeded through the opening in the barrier. Closely following the loader was a Boyles Bros. Drilling Company truck mounted drill rig and a supply truck accompanied by J.K. Jones and D.C. Temple on foot.

6:30 am Approximately 250 feet inside the earthen barricade a guard stood in the roadway and prohibited further entry. The guard was asked by E. Grover Heinrichs on what authority Essex entry was being denied, and he responded that his actions were based on authority of Phelps-Dodge Corporation. Heinrichs then stated that Essex did not recognize that authority in this situation, and was entering the area for the purpose of prospecting on the public domain. The guard responded to this statement by displaying a hand gun and stating, "I have a gun and know how to use it." The drill and supply truck were then backed

up to a position approximately 150 feet inside the earthen barricade where terrain was level enough for the drill to be set up. The front end loader was released and departed from the area.

6:43 am The guard ordered Essex personnel not to raise the mast on the frill. All activity was halted except for activation of a portable heater.

7:05 am A pickup truck appeared several hundred yards to the northeast. The guard turned away from the drill and fired his hand gun into the air. The pickup, marked with a sign, "O.B. Willis Co.", proceeded down the hill to the drill.

7:08 am The guard, identified as Hank Briggs, accompanied by the driver of the pickup, Clifford Willis, stated that as an agent of Phelps-Dodge Corporation he was ordering us to leave Phelps-Dodge property. J.K. Jones responded that Essex was attempting to prospect on public domain.

7:12 am Clifford Willis told the guard that he had done his job and both men departed in the pickup. At that time an order was given by J.K. Jones to thedrill crew to start the engine, raise the mast, and prepare to drill.

7:15 The drill mast was raised and drilling started at a location _____ feet in a _____ direction from the location monument of mining claim Kim 1.

7:17 Bill Bowen, Phelps-Dodge Corporation geologist, arrived at the drill site and advised that the drill was situated on Tract 37 belonging to Phelps-Dodge Corporation. E. Grover Heinrichs responded that Essex was aware that the drill was on Tract 37, and J.K. Jones stated that entry had been made in order to prospect on the public domain. Bowen informed us of existence of the mining claim named "Scorpion" located between Tract 37 and the D&L claim, and Heinrichs advised Bowen of existence of mining claims Kim 1 and Kim 2. Bowen then departed.

7:25 Skip Clark, manager of the Safford project for Phelps-Dodge Corporation, arrived at the drill, advised us that he was moving a bulldozer down to the area, and made an inspection on foot of claim posts and survey markers in the vicinity. Clark then returned to his pickup truck several hundred feet away and remained at that location.

7:45 am A bulldozer and another prickup approached from the northeast and stopped at Skip Clark's pickup.

7:50 am Paul Eimon and Howard Lanier arrived. Lanier took the notes describing events back to Safford. A front end loader arrived and parked behind the bulldozer.

8:05 am Bill Bowen, Skip Clark, Clifford Willis, and one other man came to the drill and advised us that they would give us a reasonable time to cease drilling and move the drill rig off their property or they would bring the bulldozer down and push the drill off the property. Paul Eimon ordered the drillers to cease drilling, lower the mast, and move the drill to a position approximately 150 feet southeast of its present location to a spot still inside the barricade but on the Essex Kim 1 claim. The drill stopped at a depth of 15 feet and moved as ordered.

8:15 Clark Hirshi, field superintendent for Boyles Bros. Drilling Company, arrived and said that at 7:40 am he had been contacted by phone by Bill Bowen of Phelps-Dodge who threatened to destroy the drill rig unless it was moved off Phelps-Dodge property. As the drill mast started to

raise on the new site on Kim 1, Bowen, Willis, and others began walking to the Essex drill beside the bulldozer advancing with its blade down. The bulldozer was stopped on a signal from Bowen approximately 3 feet from Paul Eimon who had placed himself between the bulldozer and the drill rig. Bowen again identified himself as an agent for Phelps-Dodge and stated that the rig must be moved outside of the barricade in 15 minutes or he would order the bulldozer operator to push the rig into the wash. Orders were then given to the drillers to cease operation and remove the drill to a position outside of the barricade.

8:30 am Eimon, Heinrichs and Jones established the position of the south edge of the Kim 1 claim. Numerous Phelps-Dodge personnel inspected claim corners in the area. Bowen approached and stated that the land in dispute, Tract 37, was part of the exchange and that Phelps-Dodge had retained old mineral rights and claimed mineral ownership of the parcel. Bowen refused to say that the barricade was the boundary of Tract 37. Bowen stated that the Kim 2 had not been located yesterday and that

Jack Langton

Geologist. Estimaged age - 35 or older. Jack has a reputation of being an aggressive, practical mine operating geologist. Has been with Phelpd Dodge for six years. Considered somewhat agressive, impetuous, hard working. Probably has a chip on his shoulder, especially towards highly educated "sophisticated" academic geologists. Reportedly was considering another job offer by another company sometime last year. In a private presentation on his ideas of the geology of Morenci he tended to be somewhat wary in the presentation. Generally well-known among southwestern geologists but does not appear to have many close friends in the profession.

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Geologist. Estimaged age - 35 or older. Jack has a reputation of being an aggressive, intense practical mine operating geologist. Has been with Phelpd Dodge for six years. Considered somewhat agressive, impetuous, hard working. Probably has a chip on his shoulder, especially towards highly educated "sophisticated" academic geologists. Reportedly was considering another job offer by another company sometime last year. In a private presentation on his ideas of the geology of Morenci he tended to be somewhat wary in the presentation. Generally well-known among southwestern geologists but does not appear to have many close friends in the profession. Does not socialize very much.

Ray Ludden

Chief Geologist, Western Exploration Office, Phelps Dodge Corp. Estimated age - ~~about 50~~ mid-50's. Ray has worked for Phelps Dodge for 20 years. Generally considered a nice guy. Not aggressive. Generally dominated by the Phelps Dodge philosophy. Often quite helpful. Attends the Episcopal Church in Tucson, Arizona when in Tucson. Has a number of friends among geologists in Arizona. Is not considered overly aggressive. Has generally lost in the political in-fighting in the Phelps Dodge Corp. because of a lack of aggressiveness or viciousness. As a part of the Exploration Division he appears to be relatively uninformed on the geology, ore reserves and potential of the Phelps Dodge-Safford deposit.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

DON D. HAWKINS and AUDREY E. HAWKINS, husband and wife, et al., Plaintiffs, vs. PHELPS DODGE CORPORATION, a corporation, Defendant.	No. CIV 72-203 TUC
ESSEX INTERNATIONAL, INC. a corporation, Plaintiff, vs. PHELPS DODGE CORPORATION, a corporation, Defendant.	No. CIV 72-204 TUC MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs have heretofore filed suit to quiet title to certain unpatented lode mining claims in cause No. CIV 72-203 TUC. Defendant Phelps Dodge Corporation, hereinafter "Defendant" or "Phelps Dodge," has counterclaimed and petitioned for a temporary restraining order and preliminary injunction in the said case. Plaintiff Essex International, Inc. hereinafter "Essex," subsequently filed an action asserting rights to prospect on portions of the public domain and therein requested a temporary restraining order and preliminary injunction in cause No. CIV 72-204 TUC.

Pursuant to court order of December 15, 1972, both Defendant's petition for preliminary injunction and Plaintiffs' petition for preliminary injunction were set for hearing on January 8, 1973 and Memorandums of the parties' position were requested by the court.

Area Subject to CIV 72-203 TUC and CIV 72-204 TUC

The real property in question is part of the public domain of the United States, which at the request of Phelps Dodge Corporation was originally surveyed and platted on the tract books of the Bureau of Land Management of the Department of Interior as Mineral Survey No. 4632. Phelps Dodge Corporation subsequently filed an application for mineral patent to Mineral Survey No. 4632 excluding portions of property apparently considered previously appropriated or not subject to mineral entry under the federal mining laws. This application was designated by the Bureau of Land Management as Patent Application No. A-828. Phelps Dodge subsequently filed an application to exchange certain lands in Coconino County in return for receiving patent under the provisions of Section 8(b) of the Taylor Grazing Act [43 U.S.C. § 315g(b)] to the ground encompassed by Mineral Patent Application No. A-828. The exchange application was designated in the records of the Bureau of Land Management as Exchange Application No. A-4591 and the real property included therein was replatted on the tract books of the Bureau of Land Management as Tract 37. The reference to Mineral Survey No. 4632 is no longer on the tract books. The area in dispute under this cause is all within the boundaries of what is now designated in the records of the Bureau of Land Management as Tract 37. An additional area of dispute involves Essex' location of Kim 1 and Kim 2 unpatented lode mining claims immediately adjacent to Tract 37.

Pursuant to the order of filing and this court's order,

Plaintiffs will first address to Defendant's preliminary injunction and second set forth the position for the preliminary injunction under CIV 72-204 TUC.

I. Cause No. CIV 72-203 TUC

Defendant has requested a temporary restraining order and preliminary injunction in cause No. CIV 72-203 TUC and therefore has the burden of establishing their rights pursuant to any alleged mining claims. Plaintiff will not anticipate any arguments except as to the extent they may be incorporated within Plaintiffs' positive assertion of rights to prospect within Tract 37 as hereinafter set forth in this Memorandum.

II. Cause No. CIV 72-204 TUC

Plaintiff Essex, in support of its right to prospect within the limits of Tract 37, asserts as follows:

1. 30 U.S.C. § 22 (1970) provides as follows:

> Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. [Emphasis added.]

2. Phelps Dodge's alleged rights to prevent entry upon Tract 37 is premised upon an assertion that Phelps Dodge has valid unpatented mining claims covering Tract 37 as more fully set forth in its Counterclaim filed in cause No. CIV 72-203 TUC. However, Phelps Dodge has waived any and all rights under the mining claims described in the Counterclaim and is estopped to

assert such rights to prevent those actions of which they complain under their Counterclaim for the following reasons.

On or about March 27, 1970, Phelps Dodge made a proposal to grant to the United States certain real property in exchange for a patent to Tract 37 under the provisions of Section 8(b) of the Taylor Grazing Act (43 U.S.C. § 315g), which provides as follows:

> When Public interests will be benefited thereby the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands.

Inherent in the above statutory provision is the premise that the selected lands (i.e., Tract 37) have not been appropriated or otherwise made unavailable under the provisions of the various public land laws. See e.g., Diamond Two Cattle Co., 60 I.D. 163 (1948).

The history of Tract 37 indicates that Phelps Dodge had through mesne conveyance acquired title to certain previous appropriations of the selected land, which prior appropriations has been made under the mining law and consist of the claims described in the Phelps Dodge Counterclaim in CIV 72-203 TUC. Phelps Dodge had applied for patent to and received a Mineral Entry Final Certificate for these claims on March 25, 1968, which certificate was made subject to a field examination of the claims. The issuance of such Final Certificate for public domain of the United States is normally considered to vest the applicant with equitable title to the real property for which patent has been

applied, The Marburg Lode Mining Claim, 30 L.D. 202 at 204 (1900); Lucky Find Placer Claim, 30 L.D. 200 (1903), and although further proofs might be required, U.S. v. Al Sarena Mines, Inc., 61 I.D. 208 (1954) the regulations of the Department of the Interior seem to indicate that the certificate should not be issued until the manager of the appropriate land office is satisfied that the requisite proofs have been furnished, 43 C.F.R. § 3862.5-1 (1972). A circular of the General Land Office in 1883 is to the same effect, 2 L.D. 725.

The patent application of Phelps Dodge stated that "applicant desires title to said lodes in said Birthday group because of the minerals contained therein." The corroborative report went on to give extensive descriptions of the geology and known mineralization of the Birthday group of claims (Tract 37).

Notwithstanding the apparent appropriation by Phelps Dodge of the property through lode mining claims and its declaration by virtue of the patent application that the ground was mineral in character, on March 23, 1970, the Vice President and General Manager of Western Operations signed an application for exchange wherein under penalty of law [18 U.S.C. § 1001) it was certified that the ground within Tract 37 was "non-mineral" in character.

The appraisals of the selected and offered lands were performed on the basis of an evaluation of the surface uses, and although mineral potential was recognized, no value was placed on the mineral estate, and the appraisal of Tract 37 resulted in its being valued at $14,800.00.

Subsequent to the exchange application and statement of non-mineral character, Phelps Dodge submitted to the Bureau of Land Management a relinquishment of the Birthday group of claims and a cancellation of the patent proceedings to be effective upon the granting of a patent pursuant to the exchange procedure to

Phelps Dodge. The Bureau of Land Management has apparently considered this cancellation to have been effective.[Ex.____]

By virtue of the acts of Phelps Dodge, it has in law and in fact abandoned those rights claimed under the mineral laws. A statement of non-mineral character of ground is anathema to rights obtained pursuant to the mining law.

An applicant for a mineral patent is further required to prosecute his application to completion within a reasonable time through furnishing required information and payment of required monies. The Marburg Lode Mining Claim, 30 L.D. 202 (1900). Although the purchase price had been tendered and apparently accepted no additional proofs were furnished and applicant filed a statement that the ground was non-mineral in character. Such an action constitutes a waiver of rights secured under the patent application. Cain, et al. v. Addenda Mining Company, 29 L.D. 62 (1899).

The case at bar falls clearly within the law of equitable estoppel in that one who, by his renunciation or disclaimer of a right or title, has induced another to believe and act thereon is estopped afterward to assert such right or title, Meacham v. Halley, 103 F2d 967 (7th Cir.); Beckert v. Halley, 104 F2d 1010 (7th Cir.); cert. denied in Mecham v. Halley, 308 U.S. 572. Some courts have held that where land is involved a mere oral disclaimer is not enough but a formal written disclaimer is sufficient for estoppel to attach, Dickerson v. Colgrove, 100 U.S. 578, 25 L.Ed. 618. Clearly the "certification" by defendants Vice President and General Manager of Western Operations satisfies the written disclaimer required for estoppel to be applicable. [See Ex____]

The elements of equitable estoppel set forth by the 9th Circuit and Arizona are as follows:

> To create an equitable estoppel, a false representation or concealment of material facts must be made, by a person with knowledge, actual or constructive, of the

real facts, to a person without such knowledge, with the intention that it shall be acted on by the latter person, and he must so rely and act therein that he will suffer injury or prejudice by the repudiation or contradiction thereof or the assertion of a claim inconsistent therewith. Valley National Bank of Phoenix v. Battles, 156 P.2d 244, 247, 62 Ariz. 204. Hampton v. Paramount Pictures Corp., 279 F.2d 100 (9th Cir.) cert. denied 364 U.S. 882, 5 L.Ed. 2d 103.

In the case at bar the false representation (as to the mineral or non-mineral character of the land) is present. The representations materiality is apparent from the Bureau of Land Management's records in that such fact of mineral or non-mineral character control the appropriation and administration of said lands as it affects not only the United States government but all citizens seeking rights to lands of the United States. The knowledge of Defendant is shown from the files of the Bureau of Land Management in that they asserted rights to the land by way of mineral entry and application for patent of mineral claims. [Ex._____, then by way of exchange patent as non-mineral land March 1970, (see Ex.____.)].

The intention of Phelps Dodge is a subjective question but the record certainly shows an attempt to mislead persons as to the mineral or non-mineral character of the land in question by relying upon the mineral patent application, the non-mineral certificate and then asserting in a Counterclaim in CIV. 72-203 TUC that the lands are mineral again.

These diametrically opposed positions by defendant have caused plaintiff to suffer injury and prejudice its rights to prospect and acquire lands if defendants are allowed to claim its inconsistent positions.

III.

Essex further asserts that Phelps Dodge can not assert any rights to possession of the real property within Tract 37 on the basis of an application for exchange under the provisions of the Taylor Grazing Act previously cited herein. The decisions of the Department of the Interior and the courts are clear that until the patent is actually issued notrights will vest. See Solicitor's Opinion, 61 I.D. 270 (1954); State of California, 60 I.D. 163 (1948); Lewis v. Hickel, 427 F2d 633 (9th Cir. 1970).

Respectfully submitted,

VERITY & SMITH and
KENNETH L. ALLEN

By _____
Attorneys for Plaintiffs
902 Transamerica Building
Tucson, Arizona 85701

A copy of the foregoing was mailed this 28th day of December, 1972 to:

Evans, Kitchel & Jenckes
363 North First Avenue
Phoenix, Arizona 85003

_____

Essex should not explore the Scorpion claim. E. Grover Heinrichs assured Bowen that the Kim 2 had been located on December 13, the same day as Kim 1. Bowen was asked if a location on Kim 1 outside the barricade would be acceptable as a drill site, and Bowen said, "Happy drilling." The drill was then moved to a site outside the barricade determined to be on mining claim Kim 1 and drilling was started.

JK Jones
Dec. 18, 1972

Tucson Daily Citizen
Friday, December 15, 1972

Threats alleged

Indiana firm files suit against PD

An Indiana-based mining firm has charged in a U.S. District Court lawsuit that agents of the Phelps Dodge Corp. threatened representatives of the firm with firearms and a bulldozer to keep them off a Graham County mining district.

In the lawsuit, filed here yesterday, Essex International Inc. of Indiana charged that Phelps Dodge agents on Wednesday and yesterday prevented Essex personnel from conducting exploratory work in the Lone Star Mining District, an area owned by the federal government.

The lawsuit asks that the federal court issue a temporary restraining order preventing Phelps Dodge and its agents from interfering with the Essex exploration. The lawsuit also seeks recovery from Phelps Dodge of $10,000 in actual damages and an unspecified amount of punitive damages.

The Phelps Dodge agents put up barriers to prevent the Essex representatives from moving exploration equipment on to the Lone Star district, the lawsuit claims.

When the Essex personnel tried to go through the barriers, the Phelps Dodge agents threatened them with rifles and said a bulldozer would push an Essex drilling rig into a nearby wash, the lawsuit alleges.

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TRANSCRIBED DIARY ENTRIES

Dec. 15

0630 PD man denied us entry by force. He had a gun and threatened us if we proceeded to planned drill pad. Communication by radio from Grover--the PD (?) man said, "I have a gun and I know how to use it."

0643 Guard ordered the rig not to raise the mast.

0705 Second PD truck arrives at hilltop pad. Guard, named "Hank" walks uphill, fires pistol once into air. Second truck comes down hill, and a second guard gets out. Both vehicles blue pickup trucks.

0708 Guard, Hank Briggs, and second man, Clifford Willis, of O.B. Willis Co., order rig off property by order of Phelps Dodge Co.

0712 Guards depart. Started engine of rig for purpose of raising mast.

* 0715 -LATE ENTRY- Mast raised.

0717 White Dodge pickup arrives at rig, man gets out and approaches group. Man is Bill Bowen, PD geologist, who wants to make sure we know that we are on Tract 37. We assure him we are aware of that fact. He then informs us of the existence of claim "Scorpion" which he says exists between Tract 37 and Essex claim "D&L."

0725 Pale green pickup approaches, man gets out and proceeds to rig. Man is Skip Clark, Manager of PD operation, says he is moving a dozer in.

0745 Bull dozer and blue Ford pickup approaching

0750 Paul Eimon and Howard Lanier arrive.

0805 Bill Bowen, Skip Clark, Cliff Willis and one other ordered us off the property under threat of bringing dozer and front end loader down and give one warning and shove rig into creek. In order to avoid damage to equipment, we are pulling back. Most was lowered.

0815 Clark Hirshi of Boyles arrived to say that at 7:40 he was called by phone by Bill Browen who threatened to destroy the Boyles drill rig unless he ordered it off PD property.

Essex then moved drill rig to KIM 1 on the North of the Burm. As the drill mast was raising, Bill Bowen, Cliff Willis and others began walking to the Essex drill ahead of a PD dozer advancing with blade down.

Bowen identified himself as a PD agent and said the drill must be moved behind the burn in 15 minutes or he would order the dozer operator to push the rig into the wash.

He then informed P. I. Eimon, Ken Jones and E. G. H. that the land in dispute (Tract 37) was part of the exchange and as PD agent he was ordering us off. He said PD had old mineral rights and was exchanging this property. He stated "We claim mineral ownership of this ground now." He refused to say the burm was the boundary to Tract 37. Time 8:30

Bill Bowen stated that the Kim 2 was not located yesterday and he further advised that we (Essex) should not explore the Scorpian.

FILED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JAN 5 1973

CLERK, U. S. DISTRICT COURT
DISTRICT OF ARIZONA
BY: .....
DEPUTY

DON D. HAWKINS and AUDREY E. HAWKINS, husband and wife, et al.,

Plaintiffs,

vs

PHELPS DODGE CORPORATION, a corporation,

Defendants.

No. CIV 72-203-TUC

ESSEX INTERNATIONAL, INC., a corporation,

Plaintiff,

vs

PHELPS DODGE CORPORATION, a corporation,

Defendant.

No. CIV 72-204-TUC

TEMPORARY RESTRAINING ORDER

This matter came on before the Court for hearing on Saturday, December 30, 1972, pursuant to plaintiff Essex International, Inc.'s petition for a temporary restraining order filed herein on December 26, 1972, plaintiff Essex International, Inc.'s verified Complaint and affidavits attached thereto heretofore filed in Civ. 72-204 and defendant Phelps Dodge Corporation's application for temporary restraining order heretofore filed in Civ. 72-203, and pursuant to notice given to the attorneys for the respective parties and pending the hearing and determination of the applications for preliminary injunctions.

It appears to the Court from the matters on file herein and the evidence and argument presented at said hearing that a restraining order should issue restraining all parties hereto and anyone acting for or on their behalf from going upon Tract 37 and from doing anything on Tract 37 in connection with any mining activity until there can be a hearing for a preliminary injunction. It further appears that during the period of any restraining order issued by this Court that neither party should do any act or thing which could result

in acquiring any rights in said Tract 37 over and above or in addition to those rights, if any, which the parties now have in or to and/or with respect to said Tract 37. It is the intention of the Court to freeze the status of the parties with respect to any and all rights or interests in Tract 37 during the period of this restraining order. In this connection Phelps Dodge Corporation has requested that the terms of this restraining order be made applicable to any mining claim, any portion of which extends into Tract 37. However, in view of the expressed intent of the Court with respect to the effect of this restraining order upon the representation by Essex International, Inc., that its activities on such claims during the period this order is in effect will not be used to create any rights or enlarge upon any of its rights in or to Tract 37, the Court declines to extend the terms of this order to such claims.

Therefore;

IT IS HEREBY ORDERED that all parties to the above entitled actions pending before this Court are enjoined and restrained from going upon Tract 37 as described in this action for any reason or purpose connected directly or indirectly with mining activities, including but not limited to exploration, actions to satisfy discovery requirements, surveying, and photographing or otherwise, for a period commencing at 12:00 noon, Saturday, December 30, 1972, through 12:00 noon Monday, January 8, 1973. This order includes all officers, agents, employees, servants and any other person acting under or at direction or in concert with any of the parties to the above entitled actions.

IT IS FURTHER ORDERED that the defendant may go upon Tract 37 to preserve and protect and/or remove any drilling equipment presently thereon and may take such action as is necessary and proper to preserve the drill hole presently being drilled on Tract 37, more specifically on Birthday 6 unpatented lode mining claim within the boundaries of Tract 37.

IT IS FURTHER ORDERED that the effect of this order shall expire at 12:00 noon on January 8, 1973 unless extended prior thereto by order of the judge before whom this matter may then be pending.

IT IS FURTHER ORDERED that plaintiff, Essex International, Inc. shall file or post an indemnity bond in the sum of $50,000.00 indemnifying defendants from any loss or damage which may result from the issuance of this order, should it be determined to be wrongfully issued. Plaintiff shall have until 5:00 P. M. on Tuesday, January 2, 1973, within which to procure and file or post said bond indemnifying defendants from any loss or damage resulting from either action Civ. 72-203 or Civ. 72-204.

SIGNED: 5:00 o'clock, P. M. on January 4, 1973.

William W. Daily
United States District Judge

ESSEX

ESSEX INTERNATIONAL, INC.
1704 WEST GRANT RD., TUCSON, ARIZONA 85705
PHONE (602) 624-7421

October 18, 1972

U.S. Dept. of Interior
Bureau of Land Management
Arizona State Office
3022 Federal Bldg.
Phoenix, Arizona 85025

Attention: Mr. Roy T. Helmandollar
Chief, Branch of Lands

Re: Phelps Dodge Corp.
Application 4591
Proposed Land Exchange

Gentlemen:

Your notice as described above, filed in the Graham County News on Oct. 11, 1972, describes some lands on which Essex International, Inc. may have unpatented mining claims and possible bonafide objections to the proposed exchange.

Our Mineral and Land Status maps do not identify Tract 37 and Lot 18. Please forward a map outlining the proposed exchange.

As these exchange deals seem to be recurring frequently, I wonder if it would be a good idea to file in your office our claim holdings in the Safford area? This would enable your office to notify us of any possible exchanges that are pending. Your comments on this would be appreciated.

Very truly yours,

E. Grover Heinrichs
Assistant Manager Exploration

EGH:td
B.C.C. P.I.E.

Rd NOT surveyed
Approx Loc.

D & L BOUNDARY

TRACT 37
BOUNDARY

STA. 1

STA. 4

STA 5

STA. 2

D & L UNPATENTED
MINING CLAIM

KIM 1
UNPATENTED
MINING CLAIM

KIM 2
UNPATENTED
MINING CLAIM

ES-19
(UNSURVEYED)

STA 6

LOC. KIM 1

P.D. BURM

ES-19A
(UNSURVEYED)

ES-20
(UNSURVEYED)

N.E. COR.
TRACT 37

N.E.
D&L

TRACT 37

STA 3

LOC. P.D. SCORPIAN

STA 7

SCORPIAN

AREA OPEN
FOR LOCATION
12/12/72

OUTSIDE TRACT 37 &
OUTSIDE PRIOR ESSEX CLAIMS

LOC. KIM 2

STA. 8

TRACT 37

STA. 9

DH5

SANDWASH 2
UNPATENTED
MINING CLAIM

N

BOHEMIA 9
UNPATENTED
MINING CLAIM

SCALE: 1" = 150'

AREA OF CONFLICT

TRACT 37 BOUNDARY

KIM 1 OUTSIDE TRACT 37 &
OUTSIDE PRIOR ESSEX CLAIMS.

KIM 2 OUTSIDE TRACT 37 &
OUTSIDE PRIOR ESSEX CLAIMS

NOTE: SURVEY BY TRANSIT STADIA
BASED ON U.S. MINERAL SURVEY
PLAT NO. 4632.

ROAD APPROXIMATE - UNSURVEYED

SECTION 33
T. 5S, R.26E
GRAHAM CO., ARIZONA
12/15/72

ESSEX | ESSEX INTERNATIONAL, INC.
1704 WEST GRANT RD., TUCSON, ARIZONA 85705
PHONE (602) 624-7421