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TOMBSTONE MINING DISTRICT
COCHISE COUNTY, AZ

GEOLOGY & LAND RESEARCH

VOLUME VI

MISCELLANEOUS LAND STATUS

BOOK 2

CHARLESTON AREA

LEASES, CLAIM CONFLICTS & RULINGS

PAGE 186 to 392

JAMES STEWART COMPANY

AUGUST, 1984

PREPARED BY:

JAMES A. BRISCOE & ASSOC. INC.

TUCSON, AZ

HERON

PDMI

SIERRA MIN. MAN.

W. W. GRACE

SUITER

MINING LEASE AGREEMENT

THIS AGREEMENT entered into this 20th day of January, 1983, by and between M. SETH HORNE, as Lessor, and W. W. GRACE, as Lessee.

WITNESSETH

In consideration of Ten Dollars ($10.00) in hand paid by LESSEE to LESSOR, the receipt of which is hereby acknowledged, and in further consideration of covenants, agreements and promises herein contained, the parties hereto agree as follows:

1. LESSOR represents and warrants to LESSEE that to the best of his knowledge he owns and has the right to exclusive possession of eight (8) Federal Mining Claims located in the northeast corner of Section 20, Township 20 S, Range 22 E, in the Tombstone Mining District, Cochise County, Arizona. The claims are known as HORNE NO. 110 through 117; that except for rights reserved to the United States with respect to unpatented mining claims generally, the title to the said claims is free and clear of all liens and encumbrances and of all claims and rights of third parties whatsoever; that the said claims have been properly and validly located under the mining laws of the State of Arizona and the United States of America; that the said claims are in good standing, subsisting and valid at the date hereof, and that the assessment work on behalf of said claims has been performed at the time, and in the manner and to the extent required by law.

2. LESSOR, upon the terms set forth in this agreement hereby leases to LESSEE, all his interest in and to the said claims for a period of twenty-five (25) years from and after the date of this agreement, unless sooner terminated or forfeited as hereinafter provided.

3. LESSOR hereby leases to LESSEE all mineral rights to said property subject to all Federal and other government regulations. LESSEE shall have the complete and exclusive right of access to and entry upon any part or all of the said claims, to undertake any and all types of mineral exploration, development and mining work, together with the sole and exclusive right to possession of the said claims and the sole and exclusive right to mine, remove, beneficate and sell for their own account, any and all ores and minerals in, upon, or under the said claims and the sole and exclusive right

to enjoy all privileges, easements and other appurtenances relative to the said claims. All ores and minerals severed from the said claims shall thereupon be the property of LESSEE, subject, however, to the payments of royalties as provided herein.

LESSEE shall have the right to remove all machinery, warehouse stocks, except underground timbers, pipes, rails and any permanent buildings other than the mill building.

LESSEE shall have the right to use, as may be reasonably required in the course of activities under this agreement, all waters, both surface and sub-surface, on or within the said claims.

4. Beginning on February 1, 1983, LESSEE agrees to pay to LESSOR a royalty minimum of One Hundred Dollars ($100.00) per month and a minimum of Two Hundred Dollars ($200.00) starting November 1, 1983, and thereafter. The amount of all such minimum royalties shall be credited against Lessees' obligation to pay production royalties as hereinafter provided. Such minimum royalties shall be paid directly to LESSOR. LESSEE agrees to pay to LESSOR a production royalty equal to Seven and One-half Percent (7 1/2%) of the net smelter returns upon all ores and minerals and recoveries mined and sold for the property in question. This royalty shall be paid by the tenth (10th) of each month following receipt of sales of recovery. For the purpose of this agreement, the term "net smelter returns" means the net amount received in payment for such ores, minerals or concentrates from the smelter or refinery after deduction of smelter or refinery charges, cost of railroad freight and taxes deducted by the smelter. No deductions from the net smelter returns shall be made for mining or milling costs, or costs of delivery of ores, minerals or concentrates to the railroad for shipment to the smelter or refinery. In the event trucks are used to deliver such ores, minerals or concentrates directly to the smelter or refinery, the cost thereof shall not exceed the cost of railroad freight for shipment to such smelter or refinery. Production royalties shall be paid to LESSOR directly by the smelter or refinery and proper notice and instruction shall be provided to the smelter or refinery by the parties hereto, directing such returns directly to LESSOR. In the event a smelter or refinery is not used to reduce the ores, minerals or concentrates to the metals therein, there will be no deduction from the Seven and One-half Percent (7 1/2%) royalty for smelting or refining charges and royalty payments will be based on the total value of the metals recovered.

5. LESSEE agrees to cause all exploration, development and production work to be done in a good and minerlike manner and to conform in all respects to the mining laws and regulations of the State of Arizona and the United States of America as applicable.

6. LESSEE agrees, at his own cost and expense, to perform or cause to be performed the annual labor and assessment work as required by the laws of the United States and the State of Arizona with respect to said claims for each assessment year beginning September 1, 1982, and so long thereafter as this agreement shall be in full force and effect. LESSEE agrees to complete such annual labor and assessment work and to deliver to LESSOR an affidavit for same in a form suitable for recording, as provided by law, on or before June 1, 1983, and a like affidavit on or before the first day of June of each and every year thereafter so long as this agreement shall be in full force and effect; provided, however, if LESSEE terminates this agreement on or before May 1 of any assessment year, LESSEE shall not be obligated to perform any such annual labor for the assessment year in which such termination occurred. However, in the event LESSEE performs work on the said claims during an assessment year and terminates prior to May 1 of said year, LESSEE shall upon such termination furnish to LESSOR an affidavit of work so performed. LESSEE further agrees to do said assessment work for 1982-83 within the next thirty (30) days from the date of this agreement and to furnish LESSOR proof of said work by August 1, 1983.

7. LESSEE shall keep the said claims free and clear of all liens for labor done or work performed thereon or materials furnished thereto. LESSEE will permit LESSOR to post upon the said claims, any non-liability notices provided for by Arizona law, and to record same within five (5) days of the execution hereof, and LESSEE agrees to maintain such notice or notices posted upon the said claims during the term hereof. LESSEE shall indemnify and save LESSOR harmless from any loss, cost or expenses resulting from any damages or injuries to third persons or property resulting from the operations on the said claims. LESSEE further agrees to carry workmen's compensation and such other adequate personal injury and property damage liability insurance to protect LESSOR against liability imposed by law because of bodily injury or destruction of property arising from LESSEE's activities under this agreement.

8. LESSOR or his duly authorized representatives shall be permitted to enter upon the said claims and the workings thereon and therein at all reasonable times for the purpose of inspection, including the books and records, but such entry shall be at LESSOR's or such representatives' sole risk, and shall not interfere with the operations of LESSEE.

9. LESSEE shall pay all taxes and assessments levied or imposed on the said claims, and falling due during the term of this agreement, whether assessed against real or personal property or possessory interest, and shall pay all the taxes imposed during the term of this agreement upon ores, minerals, concentrates or bullion produced from the said claims, other than income taxes. Notwithstanding the foregoing, LESSEE shall have the right to fail to pay any tax or assessment in connection with a bona fide contest in any form, concerning the validity of any such tax or assessment, provided that they take all steps as shall be reasonably required to protect the interest of LESSOR, and to take such proceedings as they may deem in their sole and exclusive discretion desirable to secure cancellation, reduction or equalization thereof. LESSOR shall not be responsible for any portion of any taxes on machinery, equipment or improvements placed upon the said claims by LESSEE, unless such items shall be left upon the said claims and inure to the benefit of LESSOR.

10. It is understood and agreed to by and between the parties hereto, that LESSEE will have the right to sell, assign or sublease his rights herein, but only upon the written approval by LESSOR of any such sale, assignment or sublease, which approval LESSOR will not arbitrarily withhold. No such sale, assignment or sublease shall relieve LESSEE of the obligations and duties hereunder, unless specifically relieved of such obligations and duties in writing by the LESSOR.

11. LESSEE shall have the right to terminate this agreement at any time hereof by giving thirty (30) days' written notice of the election to so terminate. Upon the giving of such notice, this agreement shall automatically terminate without further action of the parties, and LESSEE shall be relieved of all unaccrued obligations hereunder. All structures, machinery, equipment, supplies, appliances and tools brought upon the said claims by LESSEE shall remain his sole and exclusive property and shall not become affixed to the land. For the period of three (3) months following the termination of this

agreement, if not in default of any of the terms hereof, LESSEE shall have the right to remove from the said claims any of the property placed thereon or therein by him, provided, however, that LESSEE shall leave all trackage, mine timbers, chutes and ladders in place. Any property of LESSEE remaining on the said claims three (3) months after such termination shall become and remain the property of LESSOR.

12. The failure of LESSEE to make or cause to be made any payment herein provided for or to keep or perform any agreement on his part to be kept and performed according to the terms and provisions hereof, shall at the election of the LESSOR constitute a forfeiture of this agreement; provided, however, that the LESSOR shall give the LESSEE advance written notice of his intention to declare such forfeiture, specifying in particular the default or defaults relied upon by him. On any default of a payment of money to LESSOR, LESSEE shall have ten (10) days after being notified of the default as herein provided, in which to make payment to LESSOR, and if such payment is made, there shall be no forfeiture with respect thereto. On any other default, LESSEE shall have thirty (30) days after being notified of the default, as herein provided, in which to cure such default or defaults, and if such default or defaults are fully cured within such thirty-day (30) period, there shall be no forfeiture with respect thereto. No waiver of and no failure or neglect on the part of the LESSOR to give notice of a default shall affect any subsequent default or impair the LESSOR's rights resulting therefrom.

13. LESSEE agrees that all rock or waste material incidental to mining operations on the said claims shall be hoisted to the surface and not be gobbed in any underground workings without the written consent of LESSOR.

14. LESSEE agrees that he is undertaking the work contemplated herein solely upon his own knowledge of the said claims and not by reason of any representations made by LESSOR or his representatives.

15. Any notice or payments provided herein shall be deemed sufficiently given or made if mailed by registered or certified mail, return receipt requested, addressed to the party entitled to receive same, as follows:

LESSOR: M. Seth Horne
3033 North Central Avenue
Suite 707
Phoenix, Arizona 85012

LESSEE: W. W. Grace
8238 E. Indian School Road
Scottsdale, Arizona 85251

except as any party hereto shall otherwise instruct the other party by written notice. Any notice or payment provided for shall be deemed to have been validly given or made upon the mailing thereof.

16. The terms, provisions, covenants and agreements herein contained shall extend to, be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.

LESSOR:

M. Seth Horne

LESSEE:

W. W. Grace

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 21st day of January, 1983, by M. Seth Horne.

Notary Public

My commission expires:

10/13/86

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 21st day of January, 1983, by W. W. Grace.

Notary Public

My commission expires:

10/13/86

MINING LEASE AGREEMENT

This Agreement entered into this 1st day of October, 1979 by and between M. Seth Horne, as Lessor, and W. W. Grace, Lessee.

WITNESSETH

In consideration of Ten Dollars ($10.00) in hand paid by Lessee to Lessor, the receipt of which is hereby acknowledged and in further consideration of covenants, agreements and promises herein contained, the parties hereto agree as follows:

1. Lessor represents and warrants to Lessees that to the best of his knowledge he owns and has the right to exclusive possession of eight (8) Federal Mining Claims located in the Northeast corner of Section 20, Township 20S, Range 22E in the Tombstone Mining District, Cochise County, Arizona. The claims are known as Horne No. 110 thru 117; that except for rights reserved to the United States with respect to unpatented mining claims generally, the title to the said claims is free and clear of all liens and encumbrances and of all claims and rights of third parties whatsoever; that the said claims have been properly and validly located under the mining laws of the State of Arizona and the United States of America; that the said claims are in good standing, subsisting and valid at the date hereof, and that the assessment work on behalf of said claims has been performed at the time, and in the manner and to the extent required by law.

2. Lessor, upon the terms set forth in this agreement hereby leases to Lessees, all his interest in and to the said claims for a period of twenty five (25) years from and after the date of this agreement, unless sooner terminated or forfeited as hereinafter provided.

3. Lessor hereby leases to Lessee all mineral rights to said property subject to all Federal and other Government regulations. Lessees shall have the complete and exclusive right of access to and entry upon any part or all of the said claims, to undertake any and all types of mineral exploration, development and mining work, together with the sole and exclusive right to possession of the said claims and the sole and exclusive right to mine, remove, beneficate and sell for their own account, any and all ores and minerals in, upon, or under the said claims and the sole and exclusive right to enjoy all privileges, easements and other appurtenances relative to the said claims. All ores and minerals severed from the said claims shall thereupon be the property of Lessees, subject, however, to the payments of royalties as provided herein.

Lessee shall have the right to remove all machinery, warehouse stocks, except underground timbers, pipes, rails and any permanent buildings other than the

mill building.

Lessees shall have the right to use, as may be reasonably required in the course of activities under this agreement, all waters, both surface and sub-surface, on or within the said claims.

4. Beginning on April 1, 1980, Lessees agree to pay to Lessor a royalty minimum of One Hundred Dollars ($100.00) per month and a minimum of Two Hundred Dollars ($200.00) starting ~~October 1, 1980~~, and thereafter. The amount of all such minimum royalties shall be credited against Lessees' obligation to pay production royalties as hereinafter provided. Such minimum royalities shall be paid directly to Lessor. Lessees agree to pay to Lessor a production royalty equal to seven and one-half percent (7½%) of the net smelter returns upon all ores and minerals and recoveries mined and sold for the property in question. This royalty shall be paid by the tenth (10th) of each month following receipt of sales of recovery. For the purpose of this agreement, the term "net smelter returns" means the net amount received in payment for such ores, minerals or concentrates from the smelter or refinery after deduction of smelter or refinery charges, cost of railroad freight and taxes deducted by the smelter. No deductions from the net smelter returns shall be made for mining or milling costs, or costs of delivery of ores, minerals or concentrates to the railroad for shipment to the smelter or refinery. In the event trucks are used to deliver such ores, minerals or concentrates directly to the smelter or refinery, the cost thereof shall not exceed the cost of railroad freight for shipment to such smelter or refinery. Production royalties shall be paid to Lessor directly by the smelter or refinery and proper notice and instruction shall be provided to the smelter or refinery by the parties hereto, directing such returns directly to Lessor. In the event a smelter or refinery is not used t o reduce the ores, minerals or concentrates to the metals therein, there will be no deduction from the seven and one-half percent (7½%) royalty for smelting or refining charges and royalty payments will be based on the total value of the metals recovered.

5. Lessees agree to cause all exploration, development and production work to be done in a good and minerlike manner and to conform in all respects to the mining laws and regulations of the State of Arizona and the United States of America as applicable.

6. Lessees agree, at their own cost and expense, to perform or cause to be performed the annual labor and assessment work as required by the laws of the United States and the State of Arizona with respect to said claims for each assessment year beginning September 1, ~~1979~~ and so long thereafter as this agreement shall be in

full force and effect; Lessee agrees to complete such annual labor and assessment work and to deliver to Lessor an affidavit for same in a form suitable for recording, as provided by law, on or before June 1, 1980, and a like affidavit on or before the 1st day of June of each and every year thereafter so long as this agreement shall be in full force and effect; provided, however, if Lessee terminates this agreement on or before May 1, of any assessment year, Lessee shall not be obligated to perform any such annual labor for the assessment year in which such termination occurred, however, in the event Lessee performs work on the said claims during an assessment year and terminate prior to May 1 of said year, Lessee shall upon such termination furnish to Lessor an affidavit of work so performed; Lessee further agrees to do said assessment work for 1979 within the next thirty (30) days from the date of this agreement and to furnish Lessor proof of said work by 8-1-13 ~~November 20, 1979~~.

7. Lessee shall keep the said claims free and clear of all liens for labor done or work performed thereon or materials furnished thereto. Lessee will permit Lessor to post upon the said claims, any non-liability notices provided for by Arizona law, and to record same, within five (5) days of the execution hereof, and Lessee agrees to maintain such notice or notices posted upon the said claims during the term hereof. Lessee shall indemnify and save Lessor harmless from any loss, cost or expenses resulting from any damages or injuries to third persons or property resulting from the operations on the said claims. Lessee further agrees to carry workmen's compensation and such other insurance as may be required by the Laws of the State of Arizona, in addition to adequate personal injury and property damage liability insurance to protect Lessor against liability imposed by law because of bodily injury or destruction of property arising from Lessee's activities under this agreement.

8. Lessor or his duly authorized representatives, shall be permitted to enter upon the said claims and the workings thereon and therein at all reasonable times for the purpose of inspection, including the books and records, but such entry shall be at Lessor's or such represenatives' sole risk, and shall not interfere with the operations of Lessee.

9. Lessee shall pay all taxes and assessments levied or imposed on the said claims, and falling due during the term of this agreement, whether assessed against real or personal property or possessory interest, and shall pay all the taxes imposed during the term of this agreement upon ores, minerals, concentrates or bullion produced from the said claims, other than income taxes. Not withstanding the foregoing, Lessee shall have the right to fail to pay any tax or assessment in connection with a bonafide contest in any form, concerning the validity of any such

tax or assessment, provided that they take all steps as shall be reasonably required to protect the interest of Lessor, and to take such proceedings as they may deem in their sole and exclusive discretion desirable to secure cancellation, reduction or equalization thereof. Lessor shall not be responsible for any portion of any taxes on machinery, equipment or improvements placed upon the said claims by Lessee, unless such items shall be left upon the said claims and inure to the benefit of Lessor.

10. It is understood and agreed to by and between the parties hereto, that Lessee will have the right to sell, assign or sublease their rights herein, but only upon the written approval by Lessor of any such sale, assignment or sublease, which approval Lessor will not arbitrarily withhold. No such sale, assignment or sublease shall relieve Lessee of the obligations and duties hereunder, unless specifically relieved of such obligations and duties in writing by the Lessor.

11. ~~Lessor and~~ Lessee shall have the right to terminate this agreement at any time hereof by giving thirty (30) days written notice of the election to so terminate. Upon the giving of such notice, this agreement shall automatically terminate without further action of the parties, and Lessee shall be relieved of all unaccrued obligations hereunder. All structures, machinery, equipment, supplies, appliances and tools brought upon the said claims by Lessee shall remain their sole and exclusive property and shall not become affixed to the land. For the period of three (3) months following the termination of this agreement, if not in default of any of the terms hereof, Lessee shall have the right to remove from the said claims any of the property placed thereon or therein by them, provided, however, that Lessee shall leave all trackage, mine timbers, chutes and ladders in place. Any property of Lessee remaining on the said claims three (3) months after such termination shall become and remain the property of Lessor.

12. The failure of Lessee to make or cause to be made any payment herein provided for or to keep or perform any agreement on their part to be kept and performed according to the terms and provisions hereof, shall at the election of the Lessor constitute a forfeiture of this agreement; provided, however, that the Lessor shall give the Lessee advance written notice of his intention to declare such forfeiture, specifying in particular the default or defaults relied upon by him. On any default of a payment of money to Lessor, Lessee shall have ten (10) days after being notified of the default as herein provided, in which to make payment to Lessor, and if such payment is made there shall be no forfeiture with respect thereto. On any other default, Lessee shall have thirty (30) days after being notified of the default, as herein provided, in which to cure such default or defaults, and if such default or defaults are fully cured within such thirty (30) day period there shall be

no forfeiture with respect thereto. No waiver of and no failure or neglect on the part of the Lessor to give notice of a default shall affect any subsequent default or impair the Lessor's rights resulting therefrom.

13. Lessee agrees that all rock or waste material incidental to mining operations on the said claims shall be hoisted to the surface and not be gobbed in any underground workings without the written consent of Lessor.

14. Lessee agrees that he is undertaking the work contemplated herein, solely upon his own knowledge of the said claims and not by reason of any representations made by Lessor or his representatives.

15. Any notice or payments provided herein shall be deemed sufficiently given or made if mailed by registered or certified mail, return receipt requested, addressed to the party entitled to receive same, as follows:

LESSOR
M. Seth Horne
3033 North Central Avenue
Suite 707
Phoenix, Arizona 85012

LESSEE
W. W. Grace
8238 E. Indian School Road
Scottsdale, Arizona 85251

except as any party hereto shall otherwise instruct the other party by written notice. Any notice or payment provided for shall be deemed to have been validly given or made upon the mailing thereof.

16. The terms, provisions, covenants and agreements herein contained shall extend to, be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

All notices regarding this agreement shall be addressed to W. W. Grace, 8238 East Indian School Road, Scottsdale, Arizona, as Lessee, and to M. Seth Horne, as Lessor, at 3033 North Central Avenue, Phoenix, Arizona.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.

LESSOR

M. Seth Horne

LESSEE

W. W. Grace

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged this 10th day of October, 1979, by M. Seth Horne.

My commission expires:
October 15, 1982

Notary Public

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged this 31st day of October, 1979, by W. W. Grace.

Eunice S. Fort
Notary Public

My commission expires:
10/13/82

Q

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that M. SETH HORNE and W. W. GRACE, TOM COLVIN and BEN CASE, have entered into an ~~Assignment of~~ Mining Lease Agreement dated September 30, 1975, with respect to the following named unpatented lode mining claims situated in the Tombstone Mining District, Cochise County, Arizona.

Name	Recorded in Cochise County Docket	Page
HORNE 110		
~~Horne 111~~		
~~Horne 112~~		
~~Horne 113~~		
~~Horne 114~~		
~~Horne 115~~		
~~Horne 116~~		
~~Horne 117~~		

Said Mining Lease Agreement so assigned, is for a term of twenty five (25) years unless sooner terminated in accordance with the provisions thereof, and in part, grants to W. W. GRACE, TOM COLVIN, and BEN CASE the right to exclusive possession of said unpatented lode mining claims.

A copy of said ~~Assignment of~~ Mining Lease Agreement is on file at the office of W. W. GRACE, 8238 E. Indian School Road, Scottsdale, Arizona 85251.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement this 30 day of September, 1975.

M. Seth Horne

W. W. Grace

Tom Colvin

Ben Case

STATE OF ARIZONA)
COUNTY OF ~~COCHISE~~ MARICOPA) ss

The foregoing instrument was acknowledged this 30th day of September, 1975, by M. Seth Horne.

Notary Public

My commission expires:
October 13, 1978

STATE OF ARIZONA)
COUNTY OF COCHISE) ss

The foregoing instrument was acknowledged this 30th day of ~~September~~ October, 1975, by W. W. Grace, Tom Colvin, and Ben Case.

Notary Public

My commission expires:
10-4-79

MINING LEASE AGREEMENT

This Agreement dated as of the 30 day of September, 1975, by and between M. SETH HORNE, hereinafter called "Lessor", and W. W. GRACE, TOM COLVIN and BEN CASE, hereinafter called "Lessees".

WITNESSETH

In consideration of Ten Dollars ($10.00) in hand paid by Lessees to Lessor, the receipt of which is hereby acknowledged, and in further consideration of the covenants, agreements and promises herein contained, the parties hereto agree as follows:

1. Lessor represents and warrants to Lessees that to the best of his knowledge he owns and has the right to exclusive possession of those certain unpatented mining claims located in the HORNE 110 thru 117 NE 1/4 of Sec. 20, T20S, R22E, in the Tombstone Mining District, Cochise County, Arizona, as more fully described in Exhibit A attached hereto and by this reference made a part hereof; that except for rights reserved to the United States with respect to unpatented mining claims generally, title to the said claims is free and clear of all liens and encumbrances and of all claims and rights of third parties whatsoever; that the said claims have been properly and validly located under the mining laws of the State of Arizona and the United States of America; that the said claims are in good standing, subsisting and valid at the date hereof, and that the assessment work on behalf of said claims has been performed at the time, and in the manner and to the extent required by law.

2. Lessor, upon the terms set forth in this agreement hereby leases to Lessees, all his interest in and to the said claims for a period of twenty five (25) years from and after the date of this agreement, unless sooner terminated or forfeited as hereinafter provided.

3. Lessees shall have the complete and exclusive right of access to and entry upon any part or all of the said claims, to undertake any and all types of mineral exploration, development and mining work, together with the sole and exclusive right to possession of the said calims and the sole and exclusive right to mine, remove, beneficate and sell for their own account, any and all ores and minerals in, upon, or under the said claims and the sole and exclusive right to enjoy all

privileges, easements and other appurtenances relative to the said claims. All ores and minerals severed from the said claims shall thereupon be the property of Lessees, subject, however, to the payments of royalties as provided herein.

Lessees shall have the right to use, as may be reasonably required in the course of activities under this agreement, all waters, both surface and sub-surface, on or within the said claims.

4. Beginning on October 1, 1975, Lessees agree to pay to Lessor a monthly minimum royalty of One Hundred Dollars ($100.00) per month and all subsequent minimum royalty payments shall be due and payable on the 1st of each and every month thereafter during the term hereof.* The amount of all such minimum royalties shall be credited against Lessees' obligation to pay production royalties as hereinafter provided. Such minimum royalties shall be paid directly to Lessor. Lessees agree to pay to Lessor a production royalty equal to seven percent (7%) of the net smelter returns upon all ores and minerals mined and sold from the property in question. For the purpose of this agreement, the term "net smelter returns" means the net amount received in payment for such ores, minerals or concentrates from the smelter or refinery after deduction of smelter or refinery charges, cost of railroad freight and taxes deducted by the smelter. No deductions from the net smelter returns shall be made for mining or milling costs, or costs of delivery of ores, minerals or concentrates to the railroad for shipment to the smelter or refinery. In the event trucks are used to deliver such ores, minerals or concentrates directly to the smelter or refinery, the cost thereof shall not exceed the cost of railroad freight for shipment to such smelter or refinery. Production royalties shall be paid to Lessor directly by the smelter or refinery and proper notice and instruction shall be provided to the smelter or refinery by the parties hereto, directing such smelter or refinery to pay the seven percent (7%) production royalty from net smelter returns directly to Lessor. In the event a smelter or refinery is not used to reduce the ores, minerals or concentrates to the metals therein, there will be no deduction from the 7% royalty for smelting or refining charges and royalty payments will be based on the total value of the metals recovered.

5. Lessees agree to cause all exploration, development and production work to be done in a good and minerlike manner and to conform in all respects to the

* The $100 per month will continue for two years through September 30, 1977, and beginning October 1, 1977, the monthly minimum royalty shall be increased to the sum of $200 per month for a period of two years through September 30, 1979, and beginning on October 1, 1979 and thereafter, the minimum monthly royalty shall be $300 per month.

mining laws and regulations of the State of Arizona and the United States of America as applicable.

6. Lessees agree, at their own cost and expense, to perform or cause to be performed the annual labor and assessment work as required by the laws of the United States and the State of Arizona with respect to said claims for each assessment year beginning September 1, 1975, and so long thereafter as this agreement shall be in full force and effect; Lessees agree to complete such annual labor and assessment work and to deliver to Lessor an affidavit for same in a form suitable for recording, as provided by law, on or before June 1, 1976, and a like affidavit on or before the 1st day of June of each and every year thereafter so long as this agreement shall be in full force and effect; provided, however, if Lessees terminate this agreement on or before May 1, of any assessment year, Lessees shall not be obligated to perform any such annual labor for the assessment year in which such termination occurred, however, in the event Lessees perform work on the said claims during an assessment year and terminate prior to May 1 of said year, Lessees shall upon such termination furnish to Lessor an affidavit of the work so performed.

7. Lessees shall keep the said claims free and clear of all liens for labor done or work performed thereon or materials furnished thereto. Lessees will permit Lessor to post upon the said claims, any non-liability notices provided for by Arizona law, and to record same, within five (5) days of the execution hereof, and Lessees agree to maintain such notice or notices posted upon the said claims during the term hereof. Lessees shall indemnify and save Lessor harmless from any loss, cost or expenses resulting from any damages or injuries to third persons or property resulting from the operations on the said claims. Lessees further agree to carry workmen's compensation and such other insurance as may be required by the Laws of the State of Arizona, in addition to adequate personal injury and property damage liability insurance to protect Lessor against liability imposed by law because of bodily injury or destruction of property arising from Lessees' activities under this agreement.

8. Lessor or his duly authorized representatives, shall be permitted to enter upon the said claims and the workings thereon and therein at all reasonable times for

the purpose of inspection, including the books and records, but such entry shall be at Lessor's or such representatives' sole risk, and shall not interfere with the operations of Lessees.

9. Lessees shall pay all taxes and assessments levied or imposed on the said claims, and falling due during the term of this agreement, whether assessed against real or personal property or possessory interest, and shall pay all the taxes imposed during the term of this agreement upon ores, minerals, concentrates or bullion produced from the said claims, other than income taxes. Not withstanding the foregoing, Lessees shall have the right to fail to pay any tax or assessment in connection with a bonafide contest in any form, concerning the validity of any such tax or assessment, provided that they take all steps as shall be reasonably required to protect the interest of Lessor, and to take such proceedings as they may deem in their sole and exclusive discretion desirable to secure cancellation, reduction or equalization thereof. Lessor shall not be responsible for any portion of any taxes on machinery, equipment or improvements placed upon the said claims by Lessees, unless such items shall be left upon the said claims and inure to the benefit of Lessor.

10. It is understood and agreed to by and between the parties hereto, that Lessees will have the right to sell, assign or sublease their rights herein, but only upon the written approval by Lessor of any such sale, assignment or sublease, which approval Lessor will not arbitrarily withhold. No such sale, assignment or sublease shall relieve Lessees of the obligations and duties hereunder, unless specifically relieved of such obligations and duties in writing by the Lessor.

11. Lessees shall have the right to terminate this agreement at any time during the term hereof by giving Lessor thirty (30) days written notice of their election to so terminate. Upon the giving of such notice, this agreement shall automatically terminate without further action of the parties, and Lessees shall be relieved of all unaccrued obligations hereunder. All structures, machinery, equipment, supplies, appliances and tools brought upon the said claims by Lessees shall remain their sole and exclusive property and shall not become affixed to the land. For the period of three (3) months following the termination of this agreement, if not in default of any of the terms hereof, Lessees shall have the right to remove from the said claims

any of the property placed thereon or therein by them, provided, however, that Lessees shall leave all trackage, mine timbers, chutes and ladders in place. Any property of Lessees remaining on the said claims three (3) months after such termination shall become and remain the property of Lessor.

12. The failure of Lessees to make or cause to be made any payment herein provided for or to keep or perform any agreement on their part to be kept and performed according to the terms and provisions hereof, shall at the election of the Lessor constitute a forfeiture of this agreement; provided, however, that the Lessor shall give the Lessees advance written notice of his intention to declare such forfeiture, specifying in particular the default or defaults relied upon by him. On any default of a payment of money to Lessor, Lessees shall have ten (10) days after being notified of the default as herein provided, in which to make payment to Lessor, and if such payment is made there shall be no forfeiture with respect thereto. On any other default, Lessees shall have thirty (30) days after being notified of the default, as herein provided, in which to cure such default or defaults, and if such default or defaults are fully cured within such thirty (30) day period there shall be no forfeiture with respect thereto. No waiver of and no failure or neglect on the part of the Lessor to give notice of a default shall affect any subsequent default or impair the Lessor's rights resulting therefrom.

13. Lessees agree that all rock or waste material incidental to mining operations on the said claims shall be hoisted to the surface and not be gobbed in any underground workings without the written consent of Lessor.

14. Lessees agree that they are undertaking the work contemplated herein, solely upon their own knowledge of the said claims and not by reason of any representations made by Lessor or his representatives.

15. Any notice or payments provided herein shall be deemed sufficiently given or made if mailed by registered or certified mail, return receipt requested, addressed to the party entitled to receive same, as follows:

Lessor	Lessees
M. Seth Horne 3033 North Central Avenue Suite 707 Phoenix, Arizona 85012	W. W. Grace 8238 E. Indian School Road Scottsdale, Arizona 85251

except as any party hereto shall otherwise instruct the other party by written notice. Any notice or payment provided for shall be deemed to have been validly given or

made upon the mailing thereof.

16. The terms, provisions, covenants and agreements herein contained shall extend to, be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

Lessor hereby approves the assignment of this Mining Lease Agreement by Lessees, to H.W. Vogan, Trustee, 625 Capital National Bank Building, Houston, Texas, 77002.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the date first above written.

LESSOR

M. Seth Horne

M. Seth Horne

LESSEES

W. W. Grace

W. W. Grace

Tom Colvin

Tom Colvin

Ben Case

Ben Case

STATE OF ARIZONA)
) ss
COUNTY OF ~~COCHISE~~ MARICOPA)

The foregoing instrument was acknowledged this 30th day of September, 1975, by M. Seth Horne.

Notary Public

My commission expires:

October 13, 1978

STATE OF ARIZONA)
) ss
COUNTY OF COCHISE)

The foregoing instrument was acknowledged this 30 Th day of ~~September~~ October, 1975, by W. W. Grace, Tom Colvin, and Ben Case.

Notary Public

My commission expires:

10-4-79

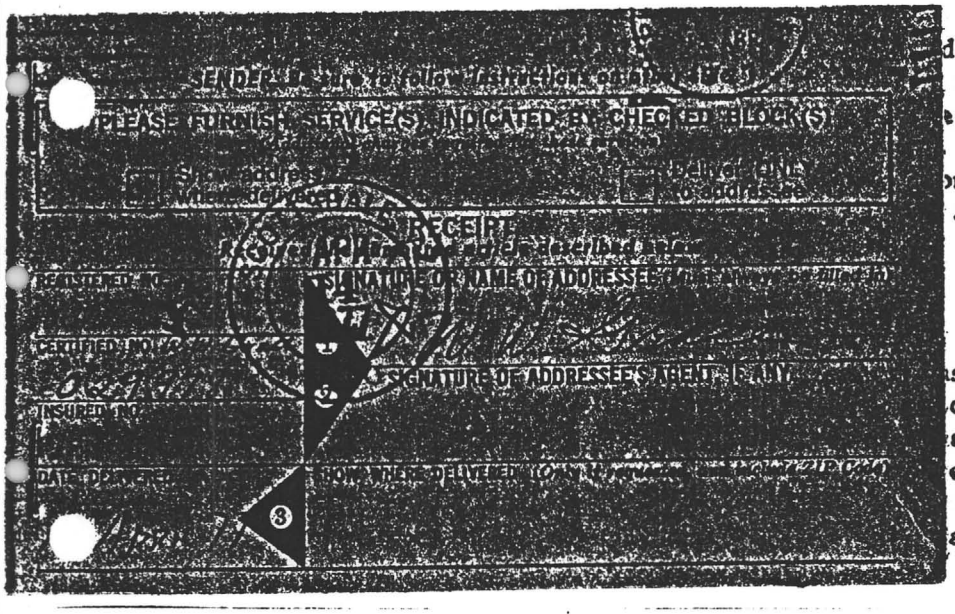
April 13, 1977

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

W. W. Grace, Tom Colvin, Ben Case, Lessees
c/o W. W. Grace
8238 East Indian School Road
Scottsdale, Arizona 85251

Gentlemen:

Re: NOTICE OF DEFAULT and
NOTICE OF INTENTION TO DECLARE FORFEITURE
Mining Lease Agreement dated September 30, 1975
on Mining Claims, "Horne 110-117", NE^4 Sec 20,
T20S - R22E, Cochise County, Arizona



d Mining Lease Agreement,
in default and have been
ed royalty in the amount
The required royalty
nths from September, 1976
amount currently in

stitute the default a for-
of the said Mining Lease
s of the date of mailing
e hereby notified that if
Lessors by 10 days after
ase Agreement is forfeited

ly yours,

Horne

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO W.W.Grace,Tom Colvin,BEn Case, c/o W.W.Grace Lessees	POSTMARK OR DATE
STREET AND NO. 8238 East Indian School Rd.	
P.O., STATE AND ZIP CODE Scottsdale, Arizona 85251	
OPTIONAL SERVICES FOR ADDITIONAL FEES	
RETURN RECEIPT SERVICES: 1. Shows to whom and date delivered 15¢; With delivery to addressee only 65¢; 2. Shows to whom, date and where delivered 35¢; With delivery to addressee only 85¢	
DELIVER TO ADDRESSEE ONLY 50¢	
SPECIAL DELIVERY (extra fee required)	

PS Form 3800 Apr. 1971 NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side)
* GPO: 1970 O-397-458

No. 02997

September 22, 1972

Agreement of Intent

It is the desire of W. W. Grace, T. J. Colvin and Ben Case to lease from Seth Horne the Federal Mineral Claims covering the ~~Northwest~~ east fourth of Sec. 20 T20S; R22E in the Tombstone Mining District.

Said lease agreement to include the usual terms among which shall be the following.

1. 10% royalty net smelter returns.
2. Do annual assessment work necessary.
3. Start drilling program within 10 days to do said work.
4. Make drilling information available to lessor.
5. Lease to continue for two years on above terms and and thereafter with a minimum royalty average of $100 per month.
6. Lessee to furnish necessary information and statement of assessment work to Lessor.
7. If Lessee does not start a mining operation within 24 months, lessor may terminate lease by giving written notice.

Approved for Lessee's by

W. W. Grace

Approved: _____
Lessor

WWG/bs

SUPPLEMENT TO AGREEMENT OF INTENT
dated September 22, 1972

January 3, 1975

Under date of September 22, 1972, an Agreement was entered into with W. W. Grace, T. J. Colvin and Ben Case to lease from M. Seth Horne Federal Mineral Claims covering the Northeast 1/4 of Section 20, Township 20 South, Range 22 East in the Tombstone Mining District.

This Agreement remains in full force and effect in accordance with the terms of September 22, 1972, except that Item 1 shall be amended to provide for a 7% royalty net smelter return, rather than 10%.

Approved for Lessees

By: W. W. Grace
W. W. Grace

Approved: M. S. Horne
M. S. Horne
Lessor

MSH:ef

ASSIGNMENT OF RIGHT, TITLE AND INTEREST IN UNPATENTED MINING CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, JAMES STEWART COMPANY, an Arizona Corporation, is successor in interest of the Buyer to that certain Agreement dated the first day of June, 1957, and amended the 21st day of September, 1962, by and between JAMES STEWART COMPANY, a Texas corporation, as Buyer, and CHARLESTON MINES, an Arizona corporation, as Seller:

WHEREAS, pursuant to said Agreement said Buyer contracted to buy all of Seller's interest in certain unpatented mining claims, described as the Mary Jo Group, located in Sections 25 and 36, Township 20 South, Range 21 East, G. & S. R. B. & M., in the Tombstone Mining District, Cochise County, State of Arizona;

NOW, THEREFORE, JAMES STEWART COMPANY, an Arizona corporation, for and in consideration of the sum of $10.00 to it in hand paid by M. S. HORNE, individually, and in consideration for certain advances of funds and certain drilling and testing to be done, and other good and valuable considerations, does hereby sell, assign, transfer, and convey to M. S. HORNE, as his sole and separate property, all of its right, title and interest in and to the following claim included in the Mary Jo Group:

Woolery

It is understood that James Stewart Company will continue making the payments to Charleston Mines pursuant to the terms of the aforementioned Agreement, except that M. S. Horne will pay any royalties due that pertain to the claim being assigned by this assignment.

IN WITNESS WHEREOF, we have hereunto set our hands this 11th day of June, 1971.

JAMES STEWART COMPANY

Wallace O. Tanner
Vice President

Edward F. Herold
~~Assistant~~ Secretary

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this, the 11th day of June, 1971, the undersigned Notary Public, personally appeared WALLACE O. TANNER and EDWARD F. HEROLD, who acknowledged themselves to be the Vice President and ~~Assistant~~ Secretary, respectively, of the JAMES STEWART COMPANY, an Arizona corporation, and that they, as such officers being authorized so to do, executed the foregoing instrument for the purposes therein contained, and affixed the corporate seal of said corporation thereto.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires Oct. 6, 1974

OFFICE CORRESPONDENCE

JAMES STEWART COMPANY

310

MEMORANDUM

August 7, 1981

To: Steve Halbert
Harvey Hayes

Re: Federal Mining Claims being purchased from Charleston Mines, an Arizona corporation

Harvey is familiar with our so-called Suiter Federal Mining Claims being purchased from Charleston Mines, an Arizona corporation. Under our purchase contract, we have been paying $1,000 a month for these claims. The balance of the contract is now down to $2,000. We now need to make the necessary arrangements to have the claims deeded to us. Today, I received a call from Barbara Topf, 952-0175, 4106 East San Miguel, Phoenix, who represents the Charles Suiter Estate. She likewise wants to clean-up loose ends, including transferring of the claims to us. The following questions arise in connection with this matter:

1. At one time the Suiter family wanted us to buy the Charleston Mines Corporation which owns the claims, thereby getting off of their hands the necessary filing of Annual Reports, etc. We asked for certain information on the corporation, some of which they failed to provide; therefore, we dropped the matter. We are now considering whether we should have the claims patented. If so, would it be better to have them patented by the present owner, Charleston Mines Corporation, or should we have the corporation deed them to us and then have them patented ourselves? Incidentally, James Stewart Company is the purchaser of these claims.

2. We should order a "Condition of Title" and decide whether we want Title Insurance from Charleston Mines Corporation as part of the transfer.

Will Steve please work with Harvey in resolving this matter.

Edward F. Herold

EFH:vb

1/18/72 Agreement Suiter

4:55 pm
Called Wally and said ok.

TANNER, JARVIS, OWENS & HOYT
ATTORNEYS AT LAW
913 DEL WEBB BUILDING
3800 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

JARRETT S. JARVIS
MELVIN J. OWENS
WALLACE O. TANNER
ROBERT F. OWENS
FORREST T. HOYT
GEORGE E. JARVIS

TELEPHONE 264-5257

January 18, 1972

Mr. Charles H. Suiter, President
Charleston Mines, Incorporated
5008 West Weldon Avenue
Phoenix, Arizona 85031

Dear Mr. Suiter:

James Stewart Company and M. S. Horne have contacted our office and delivered to us their files dealing with the purchase agreements with Charleston Mines.

I have read the various letters you have written to James Stewart Company and Mr. Horne and have analyzed the agreements between the parties in light of the relevant law concerning these agreements.

It is obvious from your correspondence that you would like to be able to change the contracts which Charleston Mines entered into concerning these properties, however, no amount of wishful thinking on your part can change these agreements.

At the time the agreement was entered into, you were well aware that James Stewart Company could not agree to any type of production schedule since there was no real knowledge of the extent, use, marketability or feasibility of production of the sericite and there had been no ascertaining of the amount of zinc and lead sulfites or the feasibility of mining, milling and smelting these products. The contract therefore could not have had a production clause and did not have a production clause and is a firm purchase contract which covers both the federal claims and the state leases which you agreed to apply for and which were calculated and considered in the purchase price.

The fact that the state claims were included in the original agreement is further verified by the amendment dated the 21st day of September, 1962 wherein the minimum guarantee of $1,000.00 per month was reduced to $500.00 per month, and also in the second amendment dated the 10th day of July, 1969 when James Stewart Company voluntarily increased the minimum payment from $500.00 per month to $1,000.00 per month.

Back in 1962 when the reduction to $500.00 per month was made, James Stewart Company was contemplating dropping the contract for the reason that tremendous amount of money had been spent on the property without being able to get a mine in operation. During the approximately three years following the acquisition of the property, James Stewart Company spent approximately $260,000.00 in trying to set up a sericite operation on the property. The company spent something over $100,000.00 in clearing out the debris and waste materials in the old pit. It set up a very large and expensive plant for the purpose of producing acceptable sericite and a limited amount of sericite was mined and refined. At this time, it was discovered that the physical characteristics of the sericite were such that the company could not economically produce a sericite cake at the price offered by the only known market source for the material and could not be produced at a cost which would be acceptable on the open market. During this entire period of time, there was never any sale of material which would have provided more than the minimum payment to Charleston Mines in spite of the investment of $260,000.00.

I recall quite vividly the glowing terms which you used in describing the sericite and its economic feasibility, none of which was borne out by the actualities of the situation when production was commenced.

As a result of the sericite operation, the company did develop quite a stockpile of sulfite ores. It was found, however, that no smelter would accept the sulfite ores in their stockpile condition. One load was hauled to one mill and it completely clogged up their entire works. It was found that in order to put these sulfite ores in marketable condition, it would require the installation of a rather expensive mill which when projected would make the entire operation uneconomical.

Exploratory work was done by James Stewart Company and others in order to ascertain the amount of sericite ore on the property. The sericite ore contains a certain amount of zinc and lead sulfites, however, these are not in a sufficient amount to cover the relatively high cost of mining and milling the product. It was therefore found that under all conditions, the mine could not be economically put into operation as a lead and zinc mine.

The problems surrounding the mining, milling, refining and marketing of the sericite became so numerous that in spite of the very large investment, it was impossible to continue a sericite operation on the property.

After it was determined that both the sericite and lead and zinc were not marketable, other areas were explored with the possibility there might be hard metal deposits on the property.

During the past five years, the company has done extensive geophysical and mineral exploration work on this and surrounding property and has engaged in an extensive drilling program to try to determine whether or not there is an ore deposit on the property. During this time, the company has spent approximately $400,000.00 on the Charleston Mine and the immediate surrounding area in exploration and drilling work. Although some of this work has indicated that the area has some promise, it has not been conclusive enough to find that the area contains an economic deposit. On the basis of the work done to date, a mining operation would not be justified.

I also recall our discussions at the time the contract was entered into about the extent of the lead and zinc on the property and its feasibility for setting up a mining operation, however, as with the sericite this also proved totally unfounded with the result that James Stewart Company and Mr. Horne have spent some $660,000.00 in addition to the almost $150,000.00 paid to Charleston Mines.

In direct reply to some of the items you have raised in your various letters, let me advise you as follows:

1. You are not entitled under any circumstance to more than the $250,000.00 provided for in the purchase agreement. This agreement included the full right to the use of the entire property except for the small home located on the Federal Mary Jo claim and you reserved the right to the use of that home until $60,000.00 was paid. As long as a minimum payments are made to you, you have no right to object to any use made by James Stewart Company on the property or any non-use of the property as has been the case since the sericite and zinc and lead operations have proven uneconomic. Nothing in the contract requires James Stewart Company to maintain the property in any certain way and your claims regarding this are completely without foundation and unjustified.

2. The position you have taken is really absurd in that you do not recognize that almost any other purchaser would have dumped this back in your lap in 1962 and with the failure of the sericite and lead and zinc operations to be economic, it would have been most unlikely if you would have found anyone who would have paid you 10 cents for the property.

3. James Stewart Company in attempting to find something which would help it recoup all of its losses and expenses went

ahead on the hope of finding a hard metal operation and has continued to do so to this date.

4. As stated before, the state claims were included as part of the original contract. This is reiterated by both of the amendments.

5. The company is not in any way in default under their contract and there is no basis whatsoever for any of the claims which you have been making. As long as the company continues its monthly payments as provided in the contract, this is all you are entitled to under the agreement.

6. There is no basis whatsoever for your claim for damages since the company has complied in every way with the contract. I am not so sure, however, that James Stewart Company might not be entitled to damages against you because of your misrepresentation as to the economic feasibility of the sericite and lead and zinc operations.

7. It should be obvious to you for another reason that the state leases were included in the original contract since the contract provides that upon payment of the purchase price the buyer shall have the right to receive 100% interest in Charleston Mines, an Arizona corporation, free of any obligations, direct or indirect. Since James Stewart Company is to receive the corporation and its stock upon paying the sums due under the contract, you are entirely in error in carrying any value for the corporation in addition to the sums remaining due on the purchase agreement. The only value which the corporation has to its stockholders is the balance remaining due on the contract.

8. In addition to the $660,000.00 of investment in the property, the company subleased the property to two different groups, both of whom did extensive work on the property. One group did a great deal of geophysical work including exploratory drilling and also endeavored to devise an economical system for producing sericite. Both of these groups voluntarily gave up the property stating they could not find an economical basis for proceeding.

9. It should also be called to your attention that in addition to the above sums, the company has, since theinception of the contract, done all of the assessment work on both the state and federal claims and paid all necessary fees and charges pertaining to all of the claims.

If it is your desire to try to get a different agreement

from James Stewart Company and Mr. Horne so you and the Charleston stockholders might have some additional cash, I would suggest that you determine how much you would be willing to discount the balance due on the agreement for some additional cash and work it out with Mr. Horne on a business like basis.

If you continue to harrass James Stewart Company and Mr. Horne, you will leave me no alternative but to proceed with necessary legal action to compel you to do so and at the same time I will ask for damages for the additional expense and trouble you have caused the buyer under the contract and will further ask for additional damages against Charleston Mines and its stockholders.

Very truly yours,

Wallace O. Tanner

WOT:ce

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January 17, 1972

MEMO TO: Wallace O. Tanner

RE: CHARLESTON MINES - Suiter

Charlie Suiter has been writing us various letters and making various oral statements to the effect that his contract with us is a "production" contract. Also, his letters maintain that we did damage to his plant and, therefore, that interest is owed on the plant. All of this, disregarding the fact that we have a firm purchase contract which covers everything, and as long as we are buying the Charleston Mine under this contract he is entitled to nothing more, as I see it.

During the approximately three years following the acquisition of this property from Suiter, we spent approximately $ 260,000.00 in trying to set up a Sericite operation on this property. We spent something over $100,000 in clearing out the debris and waste materials in the old pit. We set up a very large and rather expensive plant for the purpose of producing acceptable Sericite, and we actually mined and refined a limited amount of Sericite, most of which was sold to Whipple. However, the physical characteristics of the Sericite were such that we could not economically produce the Sericite cake at the price Whipple was willing to pay, and neither would our plant turn out a refined Sericite that could be sold on the market. All Sericite that was produced was sold to either Whipple or others.

As a result of this operation, we did develop quite a stockpile of sulphite ores. However, no smelter would accept these sulphite ores in their present condition. One load was hauled to one mill and it completely clogged up their works. In order to put these sulphite ores in marketable condition would require the installation of a rather expensive mill.

Exploratory work done by us and others has pretty well indicated the amount of Sericite ore that is on the property. The Sericite ore is the part that contains a certain amount of zinc and lead sulphites. The amount of zinc and lead sulphites, however, are not sufficient to cover the relatively high cost of mining and milling the product. Therefore, the mine could not be economically put into operation as a lead and zinc mine.

The problems surrounding the mining, milling, refining and marketing of the Sericite are so numerous that we have never deemed it advisable to undertake this project.

We have been of the opinion that the Charleston area might be a hard metal deposit. During the last five years we have done extensive geophysical and mineral exploration work on this and surrounding property, and have engaged in an extensive drilling program to try to determine whether or not there is an ore deposit on the property. We have spent during this time on the Charleston Mine and immediate surrounding area pproximately $400,000 in this exploration and drilling work. Although to date some our work has indicated that the area has promise, still it has not been conclusive ough to say that the area contains an economic deposit. On the basis of the work e to date, a mining operation would not be justified.

A number of years ago Suiter entered into a supplemental contract whereby the monthly payments on this contract were reduced from $1000 to $500 per month. In July, 1969 we voluntarily increased the payments from $500 to $1000 per month.

Suiter and his other minority owners of Charleston Mine are very elderly people. They would like to sell Charleston Mine or get their cash as rapidly as possible. He has nothing apparently to do except to think about this project and has engaged in a lot of letter writing, telephone calls, etc. trying to induce us to buy the Charleston Mine. He has some fallacious ideas that he can get more than our contract calls for, and we maintain that our contract has been kept in good force and effect, that we are not in default in any way, and legally we have to do nothing more than make our payments as provided by the contract.

Suiter maintains that we are going beyond what the mining laws permit in the activities we conduct at Charleston. Suiter also maintains that we owe him rent for the house because it is on one of the State claims, which we never bought.

The present unpaid balance on the contract is $117,400.00
Our contract provides that upon final payment we are to obtain his corporation free and clear of all obligations, direct or indirect. The "present value" of his monthly payments on the basis of 8% interest would be $81,200.

Suiter also is maintaining that he owns the State claims for which we did all of the work necessary to qualify and which ~~was~~ it contemplated under the original agreement ~~would~~ were included belong to us and which are specifically covered as being part of the contract in two supplemental agreements with him.

To summarize:

1. We maintain that we are not in any way in default with our contract with Suiter, and that he has no basis for a claim of any type for anything whatsoever, and we need do nothing more than continue to make our monthly payments, unless we should put the operation into production, in which case we would be subject to the minimum production payment requirements of the contract.

2. The State claims belong to us.

3. He has no basis for damages nor for interest, since the contract does not provide for either, and as long as we keep the contract in full force and effect, he has no basis for damages.

4. The contract specifically states that the house is on the Mary Jo Federal claim and Suiter's rights to the house were limited until we had paid $60,000 on the contract. This, of course, was accomplished a long time ago.

It is requested that you write a letter to Suiter as our legal counsel refuting all his statements and claims and stating that we do not want to be harrassed any further, as long as we are not in default of our contract, which we are not.

MSH/bde M. S. Horne

g18

P.S. We sub-leased the property to two different groups, both of whom did extensive work on the property. The one group especially, did a lot of geophysical work, including exploratory drilling, and also endeavored to devise an economical system for producing Sericite. Both of these groups voluntarily gave up the property.

P.P.S. We have, since the inception of the contract, done all assessment work on both the State and Federal claims, and paid all necessary fees and charges pertaining to all the claims.

August 5, 1964

Mr. Charles H. Suiter
5008 West Weldon Avenue
Phoenix 31, Arizona

Dear Mr. Suiter:

Your letter of June 23, 1964 has been received in Mr. Horne's office and he has referred your letter to me for a reply.

Please be assured that it has always been the position of James Stewart Company that we would try in every way to get along with you regarding the Charleston Mines property. However, your letter of May 8, 1964 certainly reflects the full legal significance of the matters which were discussed. The renegotiations which resulted in the Amended Agreement were not, in any way, conditioned upon the Heron Mining Company deal and the statement made by you that the Amendment is subject to revocation at your pleasure is in error. The Amendment is clear and was never intended to be other than as stated in the Amendment itself.

You are also completely in error concerning the alleged compensation for tools, pipe, machinery, washing plant, etc. The washing plant was removed under direct orders from the State of Arizona because it constituted a hazard. All other work that has been done has been done strictly in conformity with the contract. There are no sums due you from any source other than the sums set forth in the contract.

I am sure that you are aware that a great amount of money has been expended in developing the pit and the underground veins. Mr. Eiden dug the underground vein to ninety feet, whereupon the old shaft supports gave way at the seventy-five foot level in the sericite, and a part of the shaft was lost. There has been no damage to the property and the property has been maintained in strict compliance with the agreement. This is the extent of the James Stewart Company liability.

You have made an additional point concerning the James Stewart Company's right to grant subleases on the property. Please be advised that under the contract James Stwart Company is not restricted in any way in subleasing the property and can do so without any consent on the part of Charleston Mines.

In regard to the assessment work, we have been advised that Mr. Coppock has informed you of the work done during the year 1964. Sums in excess of $4,500 were expended by Mr. Eiden. At least eighteen tons of lead and zinc ore were removed and shipped to the smelter. Shaft No. 5 was reopened and extended to ninety feet, as previously discussed. This work clearly qualifies the property for the full assessment work required for the current year.

Let me emphasize again that we are always willing to cooperate and work with you, but that we must stand on the basis of our contractual agreement; and under this agreement, none of the matters complained of in your letter have any merit.

Very truly yours,

TANNER, JARVIS & OWENS

WOT:da

Wallace O. Tanner
Attorney at Law

771

NOTICE OF NON-LIABILITY

564

NOTICE IS HEREBY GIVEN TO ALL PERSONS, that the undersigned, the CHARLESTON MINES, an Arizona Corporation, is the owner of the Mary Jo Group of Twelve (12) unpatented mining claims and the Lessee under a State of Arizona Mineral Lease No. M-786 covering eight mineral claims known as the State Group, all situated in the Tombstone Mining District, in Sections 25 and 36 Twp 20 S Range 21 E, Cochise County, Arizona, the names of which and the books and pages of the records in the office of the County Recorder of Cochise County, Arizona, wherein the location notices thereof are recorded are as follows:

MARY JO GROUP:

Name of claim	Record of Mines Book	Page	Name of Claim	Record of Mines Book	Page
Brother George	67	236	Mother Lode	67	310
Mary Jo	67	237	L.P.W. No. 2	67	311
Pass-Over	67	238	Connecting Links	67	559
Chief Justice	67	286	Mary and George	67	560
Father Lode	67	287	Sweet-heart	67	561
Rare Metals	67	288	Woolery	67	562

STATE GROUP: State of Arizona Mineral Lease No. M-786 covering Eight Mineral Claims named State No. 1; 2; 3; 4; 5; 6; 7 and 8 - 174 pgs 406-413

That the said mining claims are now under a Production Contract of Sale to the James Stewart Company, a Texas Corporation, whose address is 3033 North Central Avenue, Phoenix, Arizona, and that the said mining claims are about to be worked and operated by the James Stewart Company and Harlow Jones and the Tombstone Mica Company of Tucson, Arizona by virtue of and through a joint operating agreement.

That the undersigned Charleston Mines corporation is not working or operating said mine or mining claims, or any part thereof, and does not intend to work or operate said mine or mining claims or any part thereof, nor will the Charleston Mines purchase or contract to purchase any equipment, materials or supplies for use on said mining claims, nor will the Charleston Mines hire or employ any labor to work on the said mining claims, THEREFORE NOTICE IS HEREBY GIVEN that the Charleston Mines Corporation will not be responsible for the payment to any person or firm for any claim, bill or debts for materials, supplies and/or equipment furnished, rented or sold to the James Stewart Company, to Harlow Jones and/or the Tombstone Mica Company and that the said mine and mining claims will not be subject to any lien or liens for any labor, materials, equipment or supplies performed or furnished to the joint operators of said mine and mining claims.

That this notice is recorded in the office of the County Recorder of Cochise County, Arizona and copies of this notice is are posted at conspicuous places about the working area, the collar of the shaft, the entrance to the pit and at the office entrance.

IN WITNESS WHEREOF, the Board of Directors of the Charleston Mines have authorized and ordered this instrument to be executed by its President and Secretary and its corporate seal to be hereunto affixed, this 21st day of February 1961.

ATTEST:

Anna D. Suiter
Secretary......

CHARLESTON MINES

by Chas. H. Suiter
President..

State of Arizona)
Cochise County) ss

Subscribed and sworn to before me this 21st day of February 1961 by Charles H. Suiter as President of the Charleston Mines, An Arizona Corporation.

My commission expires ________ 1964

[signature]
Notary Public

STATE OF ARIZONA
COUNTY OF COCHISE } ss
Witness my hand and Official Seal

I hereby certify that the within instrument was filed and recorded at request of

CHARLES H. SUITER
5008 West Weldon Avenue
Phoenix, Arizona

Fee $ 1.00

FEB 24 1961 - 9 30 AM

R. W. Mossbarger

Docket 265 Page 564 No. 3409

LEE O. WOOLERY

TO

GEORGE A. WOOLERY.

Instrument Mining Deed,
Con. $10.00
Dated August 8, 1928
Filed and Recorded Oct. 18, 1935 9 A.M.
At Request of George A. Woolery
Book 33 of D.M. page 172

.... and by these presents does grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, and to his heirs and assigns

An undivided one half (1/2) interest in and to the following described unpatented mining claims, situated in the Tombstone Mining District, in Cochise County, State of Arizona, the location notices of which are recorded in the office of the County Recorder of said Cochise County, in Book 67 Record of Mines, at the pages set opposite their names respectively, to-wit:

	Page
Brother George	236
Mary Jo.	237
Pass Over,	238
Chief Justice	286
Father Lode,	287
Rare Metals,	288
Mother Lode	310
L.P.W.No. 2	311

...

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand the day and year first above written.

Lee O. Woolery

State of Arizona.)
: ss.
County of Cochise.)

..... (duly acknowledged August 8, 1928, by Lee O. Woolery, before J. T. Kingsbury, Notary Public of Cochise County, Arizona. Seal Affixed, Commission expires 2-1-1932.) ...

MISC. CORRESP.
CHARLESTON MINES

993

AMERICAN EXPLORATION & MINING CO.

August 23, 1972

Mr. M. Seth Horne
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Mr. Horne:

Enclosed is your Data Compilation Report for the Charleston Mine which you kindly provided for Amex to evaluate. I have taken the liberty of making a work copy for myself, and I thought it best to return your copy of the report and to bring you up to date on our activities concerning your property.

One problem has developed which is preventing me from arriving at any conclusion from your data. Although the Tombstone Mineral Reserves people indicated the availability of their property, they have not contacted me about showing their data. As I stated earlier, it is my thought that a compilation of data from both properties would be necessary to really understand the the problems we would be facing in an exploration program.

Therefore, I am forced into a waiting position until the T.M.R. people decide what they are going to do. Without learning their intent, I don't think there is much more that I can do for the present. Our geophysicist in San Francisco is reviewing your geophysical data and will inform me of his findings. I remain interested in your property, particularly the pervasive sulfide mineralization shown in your DDH#4, with the hope that additional data will give some indication where a center of mineralization could be located. The fissure veins are interesting but are not considered commercially important while other avenues of exploration remain open for large tonnage disseminated ore bodies.

I will be in touch with you again after I have heard from the T.M.R. group. Until then, many thanks for the consideration you have shown me.

Sincerely,

C. B. Gillette

Regional Geologist

A subsidiary of placer development limited

5214 EAST PIMA STREET · TUCSON, ARIZONA 85716 · (602) 326-4411

JAMES STEWART COMPANY

REAL ESTATE INVESTMENTS AND DEVELOPMENT.

707 MAYER CENTRAL BUILDING

3033 NORTH CENTRAL AVENUE • PHOENIX, ARIZONA 85012

602-264-2181

394

August 3, 1972

Mr. Christopher Gillette
Regional Geologist
American Exploration & Mining Co.
5214 East Pima Street
Tucson, Arizona 85716

Dear Mr. Gillette:

In accordance with our telephone conversation and your letter of July 18, there is enclosed a Data Compelation Report on the Charleston Mine prepared by Hewitt Enterprises. This report does not include a log on the last hole that was drilled on the extreme west side of the property to a depth of approximately 3300 feet.

After reviewing this data and you are interested in further pursuing this property, I will arrange with Mr. Clark Hughes, our caretaker on the property, for you to see the cores.

It would be appreciated if you would treat the enclosed data and your findings strictly confidential. We would like the report returned to us after you have completed your analysis.

If there is any way that we can be of assistance to you, please let us know. Our Geologist is Mr. Clyde Davis of Brigham Young University. You have our consent to talk to him or to Loyd Hewitt of Hewitt Enterprises.

Sorry to have been so long in getting this material to you.

Very truly yours,

M. S. Horne
President

MSH:ef
cc H. Clyde Davis
Loyd Hewitt
C. A. Cosgrove

G.C

935

Phone OFF-624-2121, home-274-6116

AMERICAN EXPLORATION & MINING CO.

July 18, 1972

COPY

Mr. M. Seth Horne
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Mr. Horne:

I was delighted to learn from our telephone conversation today that the Charleston Mine property is available for examination by an experienced mining company. I am looking forward to reviewing your data and meeting you once you have assured yourself of the serious intent of American Exploration and Mining Co., and its technical and financial capability, through our parent company, Placer Development, Ltd. of Vancouver, B. C., to explore, develop, and place economic ore deposits into production.

By way of introduction, I am the regional geologist for Amex at our field office in Tucson. Our head office is located in San Francisco, California at Suite 2500, One California Building 94111. We have been active in mineral exploration in the Western United States and Alaska for nearly 20 years, and at present have in operation Cortez Gold Mines near Elko, Nevada. This is an open pit operation averaging 2100 tons per day through the mill. I am enclosing the 1971 Annual Report for Placer Development so that you may acquaint yourself with the essential details of their operations around the world. If you have any further questions, I will do my best to answer them for you.

As I stated on the phone, my initial inquiry was to obtain some general information concerning the availability of your property. We had selected the area west of Tombstone as a target for reconnaissance exploration. Now I learn, more by rumor, that you have done some deep drilling with encouraging results. I gather that your findings are closely associated with the Tombstone Mineral Reserves property and that a consolidation of the two properties, in all likelihood, will become a physical necessity. I am in touch with the TMR people and they appear receptive to a data and property examination under conditions similar to your request.

I am hopeful that Amex can serve as the catalyst to b bring these two properties together (if such is the case) and that we can participate in an exploration program to evaluate the ore deposit for the mutual benefit of all parties concerned.

The time and place for the data presentation will be at your convenience. If you wish management representatives from San Francisco to be present, so indicate and allow one week's advance notice.for me to make the arrangements. If not, then I can meet you anytime that suits you. I would appreciate a resume of your findings as further inducement for the San Francisco people to attend. To date, I have been operating on hearsay and rumor and cannot give a clear picture of what they would see. I have my suspicions that your property is what we are looking for and I would like to back it up with some of your facts.

Hoping to meet with you soon, I remain,

Sincerely yours,

Christopher Gillette
Regional Geologist

CG:jl

Enclosure: Placer Annual Report

OFFICE CORRESPONDENCE

JAMES STEWART COMPANY

December 30, 1968

To: M. S. Horne

Charles Freesh called. The Union geologists will be real interested in talking to you and will postpone their trip here to the office until your return from the East.

C. A. Cosgrove

CAC:jm

December 26, 1968

MEMORANDUM TO FILE

Charles Freesh was in on the afternoon of December 23, 1968, to look at the aerial magnetic maps of the area from Charleston to south of Tombstone. He did not seem too interested and did not ask for copies. I reported to him the depth problem with these and that new studies were being made.

He asked if Union Oil Company's geologists could come in and look at them. I advised this would be okay. The men who may come are Mr. Ken Jones, Mr. McLean, and/or Mr. Bolin. We do not know when they might come.

C. A. Cosgrove

CAC:jm

August 28, 1968

Mr. McKay Smith
Computer Update
72 East 4th South
Salt Lake City, Utah 84111

Dear Mr. Smith:

Confirming our verbal request to your office on Monday, August 26, 1968, we would appreciate your delivering to Kennicott Exploration Service, Salt Lake City, Utah, Attention: Mr. F. M. Wright, one set of prints and data on the Aerial Magnetic Surveys made by you on the Charleston Mine.

In our previous phone call on Monday, August 19, we requested a copy of the additional 2nd derivitive work you had done. (The 4 mylars received by our office on August 1 covered the following:

One ground level magnetic
One second derivitive
One downward continuation 1500'
One downward continuation 2500')

The additional second derivitives have not been received. In addition, we would appreciate receiving a copy of the whole area magnetic data turned out from the government flying which you reduced originally.

We appreciate your cooperation in the above.

Yours very truly,

JAMES STEWART COMPANY

C. A. Cosgrove

CAC:jm

E 230

August 2, 1968

Mr. H. Clyde Davis
Director, Mineral Development
Brigham Young University
A-362 Smoot Administration Building
Provo, Utah 84601

Dear Clyde:

Enclosed are two logs for Charleston Holes 1 and 2 by Kennicott which were delivered to us yesterday by John Phillips of Bear Creek.

Very truly yours,

C. A. Cosgrove

CAC:ef
Encls.

Sent to Clyde Davis
for ... by DSH 8/2/68

Check on the ... reports & Logs file

Bear Creek Mining Company

Arizona District

1714 WEST GRANT ROAD
TUCSON, ARIZONA 85705

March 19, 1968

TELEPHONE: 602-624-5547
TWX: 510-837-0252

Mr. C.A. Cosgrove
James Stewart Company
707 Mayer Central Building
3033 North Central Avenue
Phoenix, Arizona, 85012

REGISTERED MAIL

Dear Clarence:

We have reviewed the data submitted on your Charleston Mine property and are returning the following herewith:

1. Jonathan M. Gordon Report - 1950.
2. Charles H. Dunning Report - 1955.
3. Undated and Unsigned Assay Summary - 1933-1934.
4. NH Heron Mining Drill Logs - 1962 and Assay Record
   Holes 7, 8, 9, and 10
   45° Angle Core Drilling across vein.
5. General Surface Map - 1" = 60' - Dated 1962.
6. University of Arizona Ore Test - 1960.
7. Assay Map by Suiter - 1948-49 - Anaconda Assays.
8. X-Section #5 Shaft by Suiter.
9. Ore Settlement Sheets and Cross Section Locations
   Suiter - 1950 (Plus).

We have retained the claim map. Currently we are preparing copies of our logs of your holes No. 1 and 2. As soon as we have logged hole No. 3 and make a surface geologic examination we should be in a position to made a decision on your property.

Very truly yours,

John S. Phillips

John S. Phillips
Senior Geologist

JSP:bjm

encl. as noted

JAMES STEWART COMPANY

GENERAL CONTRACTORS

707 MAYER CENTRAL BUILDING

3033 NORTH CENTRAL AVENUE • PHOENIX, ARIZONA 85012

602-264-2181

January 12, 1968

Mr. R. H. Pickard
General Manager
Western Mica Division
U. S. Gypsum Company
101 South Wacker Drive
Chicago, Illinois 60606

Dear Mr. Pickard: RE: Charleston Sericite Deposit

Thank you very much for having your man, R. J. Beckman, come to Phoenix and visit our Charleston Sericite Deposit. Mr. Cosgrove of our office took him down and spent the best part of two days showing him over the property.

We did not know just what Mr. Beckman was sent to do. Apparently it was to determine the quantity of material that we had and how it could be extracted. Unfortunately, if this is the case, Mr. Beckman did not seem to be properly qualified to make such a determination since his experience apparently has been limited to quarrying, and he has had little or no experience in underground operations, either geologically or from an operator's standpoint. He was completely unacquainted with this type of material; therefore, we concluded that he was not sent down to appraise the material itself. We presume that this has been done by your laboratory studies.

Regarding the tonnage at Charleston, our drilling and exploration operations have indicated to us that the deposit would yield at least 1,000,000 tons of refined Sericite, and we think that there is closer to 2,000,000 tons. We also think from our knowledge of the Mine that the extraction process will have to be by underground mining methods and that it could not be handled by an open pit, dragline or scoop shovel operation. We also know from our studies that the value of the hard metals in the Sericite veins will almost cover the cost of mining and milling. Mr. Beckman made it clear that your firm has no interest in the hard metals; however, these can be readily disposed of to one of the various hard metal companies who are or will be operating in the Tombstone area.

We are proceeding with our drilling program to determine what we have in the way of hard metals. We have been very encouraged by our findings to date -- enough so that we have brought in a second drilling rig on the property, and two rigs will be drilling on the Charleston for an indefinite period until we have concluded arrangements with a major company to take over the mining and milling operation. There is a possibility that the mining operation may not touch the Sericite veins for a long period of time, if at all.

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We would appreciate an early response from you as to whether or not your company has a serious interest in the Charleston Mine or the Charleston Sericite material.

Very truly yours,

JAMES STEWART COMPANY

M. S. Horne
President

MSH:ef

234

July 9, 1965

Mr. H. Clyde Davis
1000 North Mountain Avenue
Tucson, Arizona

Dear Clyde:

We are enclosing some data on the Charleston Mine, Tombstone, Arizona. A group is proposing to drill to approximate depth of 800' to 1000' using 8" to 10" rotary bore. We are requesting your opinion of the proposed drill locations.

During our meeting at the Mine early in 1961, we were discussing a possible hole location while inspecting the access road to the pit. It was our feeling at that time that a hole to the south of this pit road, and to the east of the High Cone Mountain along the probable secondary ~~lane~~ fault, would uncover a good possibility of an enlarged ore body.

We have made a sketch, which is enclosed, (Exhibit I), showing the drill positions of the Churn Drill Hole #2 bottoming at 345', drilled in 1950, with the superimposed location of Diamond Drill Hole #8 at 45° drilled in 1962.

To further refresh your memory, we are enclosing pictures of the pit operation with the Diamond Drill hole casing projecting on the skyline (Exhibit II); a plotting of the ore intersects of both Diamond Drill #8 and Churn Drill #2 (Exhibit III) made by Dr. Gaines with the Heron Mining Company; an Assay Report Summary (Exhibit IV) of the ore intersects of the Diamond drilling of the Heron Mining Company; a plot of all intersects encountered in the Diamond Drilling by Heron Mining Company (Exhibit V); a plotting from the notes of Nash & Vogel, plotting made by Dr. Gaines, of the ore intersects of the Nash & Vogel drilling (Exhibit VI); a Preliminary Geophysical Reconnaissance (Exhibit VII) prepared by Heinrichs Geoexploration Company, Tucson This contains a rather detailed surface workings map which will assist your recollection of the property.

Shattuck-Denn, in their recent exploration of this property, felt strongly that there was a rather large ore body to be encountered in this Mine, but they recommended prior to any drilling that further geophysical research be done to assist in the hole locations. A copy of the Assay reports and drilling log of the Churn Drill Hole #2, prepared by Robert P. Teten, Geologist, is enclosed (Exhibit VIII).

We are also furnishing a copy of the Notes on Exploring this Mine by Paul Gilmour, Geologist for Shattuck-Denn (Exhibit IX).

Due to your past interest in this property, we would appreciate receiving your opinion of the proposed work and/or any recommendations you might have to offer in this connection.

Yours very truly,

JAMES STEWART COMPANY

C. A. Cosgrove

CAG:ef
Encls.

G.

235

HECLA MINING COMPANY
SOUTHWEST EXPLORATION OFFICE
2020 East 13th Street
TUCSON, ARIZONA

792-1745
PHONE

Mr. Charles Suiter, President
Charleston Mines, Inc.
5008 West Weldon Avenue
Phoenix, Arizona 85031

Dear Mr. Suiter:

Thank you for your letter of March 3. I have had recent occasion to examine Dr. Gaines report, dated September 10, 1962, detailing Heron Mining Company's exploration of the Charleston property. The report states that five holes were drilled, four of which cut ore. In his reserve estimate for the drilled block, 285 x 305 x 13 feet, he estimates 86,300 tons of 3.0% Pb, 3.7% Zn, and 36.0% sericite, with a gross value of 44,491,700, and a net value (at 9.5¢ Pb, 11.5 ¢ Zn, and $100/Ton Sericite) after mining cost of $10.00 and milling cost of $12.90, but before capital costs, of $1,050,000. A recovery of 82% of the sericite is indicated.

Calculation on an open smelter schedule at present metal prices indicates a net smelter return for the lead and zinc in the ore of approximately $7.30 per ton. If the sericite product is sold at $20 per ton, net value of the sericite in the ore figures at $5.90 per ton, and we see a combined value of $13.20 per ton of ore. At present-day underground mining costs, even though the milling cost might be substantially reduced from Gaines' figure, due to production of the lower grade product, the profit potential appears poor. This would be true whether we were considering 86,000 tons or 200,000 tons.

For these reasons, I cannot regard the property as being of much interest to Hecla. However, when I am next in Phoenix, I would appreciate the opportunity of discussing it somewhat further with Mr. Horne.

Thank you for bringing it again to our attention.

Sincerely yours,

J D Bell

J Douglas Bell
Geologist, Exploration

JDB:jan Read 3/13/65

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Perforadora Latina, S. A.

MADRID 21

MEXICO 4, D. F.

Mexico City, August 15, 1963.

Mr. Charles H. Suiter
5008 W. Weldon
Phoenix 31, Arizona.

Dear Mr. Suiter:

Enclosed is our check for $ 120.00, in satisfaction of the annual payment due the State or Arizona on the Charleston claims.

The assessment work done by us on these claims for the year starting September 1, 1962 consisted of $ 2,500.00 worth of diamond drilling, covering holes # 9, # 10, and part of # 8. Dick Coppock can give you any information pertaining to this work that you may need.

With best regards, very sincerely yours,

Richard V. Gaines

ING. RICHARD V. GAINES

c.c. James Stewart Company.
c.c. Consolidated Minerals, Inc.

OFFICE CORRESPONDENCE

JAMES STEWART COMPANY

PHOENIX
September 21, 1962

Memorandum to File

Re: Charleston Mines

Please Note: Dr. Gaines obtained a file from Mr. C. Neil Vogel pertaining to his deal with Suiter on the Charleston Mine which file contained a lot of very valuable data on the mine and studies that were made by Vogel and his group. This file was obtained by Gaines and has been returned to Mr. Coppock. *

M. S. Horne

Mr. C. Neil Vogel
1820 East Hampton Street
Tucson, Arizona

July 11, 1959

Mr. H. Clyde Davis
1000 North Mountain
Tucson, Arizona

Dear Clyde:

We have received five thousand dollars from the Harlow Jones group for a 30 day option on the Charleston Mine. During the 30 days, they are to assemble and put up $45,000.00 additional as a deposit to go in escrow to be used for the purchase of equipment and the operation of the Charleston Mine.

If they do not have their funds on deposit and exercise their option within this 30 day period, we would then be in a position to pursue something with you and Minnear.

Because of your great helpfulness to us, and your interest in the property, I was hopeful that something could be worked out with you and one of your groups. It was necessary, however, in fairness to ourselves, to accept the first bona fide, reasonable offer that was backed up with some degree of financial responsibility.

We certainly have appreciated and I want to sincerely thank you for all of the help that you have rendered. I am sure that one of these days we will be together on something that will make us some money.

Sincerely yours,

JAMES STEWART COMPANY

MSH:da

M. Seth Horne
President

Mr Charles Suiter
5008 West Weldon
Phoenix, Arizona

Dear Mr Suiter:-

I am interested in the production of Sericite, and would like to have the following information:

1. Is your Tombstone property available for lease?
2. If available, would you accept a contract ona basis of a certain price per ton determined by railroad weight, with a small minimum monthlyguarantee.

I am not interested in any of the equipment on the property except the use of the buildings. All that is needed is water and power.

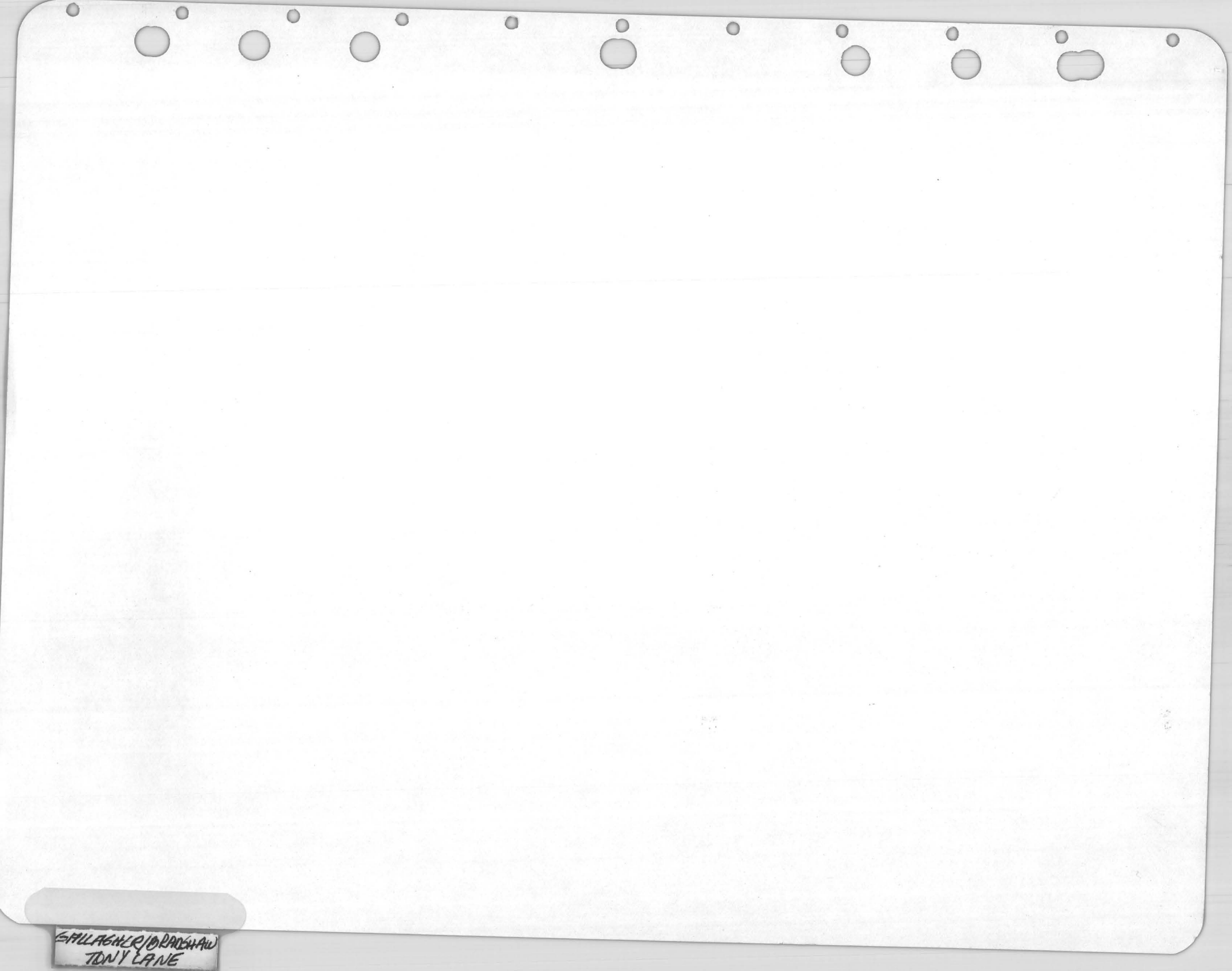
I am not interested in lead and zinc all I want is Sericite.

3. Have you a geological report indicating the estimated tonnage of sericite available without having to lift it. If mining is necessary the cost will be prohibitive. It should be in a large body formation.

If this is of interest to you, may I have your reply via air mail please.

Very truly yours,

J.V. Slavdak


GALLAGHER/ORAKHAU
TONY LANE

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

July 23, 1976

Mr Edward Herold
James Stewart Company
3033 North Central Avenue
Phoenix, Az 85012

Dear Ed:

I have paid the $120.oo rental to the State Land Department for the eight State claims we hold under State Lease No. M786, and am enclosing their receipt herewith to you. For your information the Land Dept. several years ago were reluctant to issue rental receipts to unregistered lessees, in fact they refused to do it - to avoid confusion lets stick to the old way. Also am enclosing their form for Labor affidavit which, after assessment work id done, should be filled out, acknowledged, recorded at Court House and then a copy of recorded affidavit sent to Land Dept. and one copy to me.

Am enclosing page from Pay Dirt Magazine showing ads of three outfits who contract drilling and assessment wrok. Joe Escapule told me about J.T.Murphy, Tombstone, Telephone 457-3382, who does back hoe trenching work. Often trenching is sufficient if trenchs are deep and distributed.Drilling is better.

I am sending you an old map I dug out which I used years ago, it should be helpful in laying out your drilling, if you do some drilling. On this map on the L.P.W. claims are three circles indicating drill locations about 200 feet apart or more. I planned to back off 90 feet south of the exposed quartz vein and drill at 45 degree angle to north and contact the vein at about 90 feet or more where it might be much wider - a sample at surface assayed 3.9 oz Gold, '81 oz silver and lead 13% - this sample and assay were made 25 years ago when silver was only 90¢ an oz and could only be sold to Government, and I had evidence of plenty copper, zinc and lead. This spot lines up with the State of Maine about a mile east. Some drilling here would be qualified assessment of the highest and might be a bonanza. The 25 yr old assay report was taken by me, from a seam in the south-east corner of the old discovery shaft - it was less than an inch wide - at 90ft depth it might be a foot or two wide and worth going after.Silver now is $5.oo oz, Gold $100/ +.

I don't know about the labor requirements of your State Prospecting Permit but the 20 Charleston Claims call for labor and improvements to the value of $100.oo on each claim or $2000. Now if you have had someone living in the cottage on the property rent free, you could probably apply a reasonable aount say $40. or $50. per month to assessment laboror, any other neccessary labor or improvements that benefit thr claims, in addition to watchman.

I am enclosing you for your information two A S & R settlement sheets for ore sold to them 26 years ago - one to leasors who paid me 25% royalty, there were several other shipments - these did not include any of the now valuable serecite. I am thinking of the possibility of leasing the top 200 feet of the vein to some non-mettalic (mica) outfit. The top of the vein (200 ft) could cheaply mined by bull dozer and drag line, stock piling the ~~mogla~~ metals
If I can help you, please command me.

Suiter

Charles H. Suiter

5008 West Weldon Avenue, Phoenix, Arizona

August 26, 1975

RECEIVED

AUG 2 [illegible]

JAMES STEWART COMPANY
PHOENIX, ARIZONA

Mr Edward Herold, Controller
James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Ed:

I have your letter of August 20th enclosing your check for $120.oo payable to Charleston Mines to reimburse them for rental paid for State of Arizona Mineral Lease No. 786.

I am today forwarding to the Recorder of Cochise County at Bisbee, the affidavit of R.B.Crist of ASARCO., relating to Labor Performed and Improvements made for assessment year 1976-1975 on the eight claims covered by Lease 786. When the recorded affidavit is returned to me I will forward copy to you along with copy of rental receipt. I do not drive anymore and have to rely upon my kids to do some errands for me which takes more time. I have some mis-givings regarding the information contained in Mr Christ's affidavit and am surprised that it eminated from an ASARCO office, but I'm too darn old to bother about it.For one thing I doubt if the factor of contiguity applies.

I am sorry that the Stewart Company is not able to accept my offer of the sale of my Charleston Mines Corporation - your reasons are the same as mine except I am very old. I have never considered the sale of your contract separate from the corporation.

I regret too, that ASARCO has stopped drilling and intend to drop their option - they are doing the same thing it seems in Idaho and other places. I suggest that you offer them a moratorium on any work that requires money for at least one year or more - we have had metal situations like this before and they always correct themselves - all the mining companies are in trouble - Anaconda is a high cost producer and will have to merge but ASARCO is much better off with many new ventures ready to come on stream when in a year or two conditions and prices are right again - Silver is now about $5.oo per ounce - $10.oo per ounce id predicted - ASARCO and its affiilates have a potential of 30,000,000. (30 million) ounces per year - folks wanting to buy silver bullion should buy ASARCO shares - thats what I am doing.

Kindest regards to all and keep you chins up.

Sincerely,

Chas. H. Suiter

G. C.

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

April 17, 1974 Tel. 247-8155

Mr Robert B. Crist
American Smelting & Refining Company
1130 North 7th
Tucson, Arizona 85705

Dear Mr Crist:

I do not wish to bother you too much or encumber your files with too much data pertaining to the Charleston Mines, but I believe you told me when I talked to you yesterday that you had not been informed in regard to Core Drill Hole No. 4 that was drilled on State No. 5 claim - it seems to me that this information would be interesting and important to you in connection with your work in this area so I am giving it to you as it was given to me by Mr Horne, President and owner of the James Stewart Company.

This hole was located just east of the mine road - when completed Mr Horne told me that the drill hit ore at 1750 feet and continued in ore to 2250 feet, a 500 foot bed of sedimentary sulphide that assayed 3 to 9% copper, lead and zinc. Later they drilled No. 5 about 800 feet north east of No. 4 - I was not told much about No. 5 except it was said that it was not quite as good as No. 4 but it was good enough to induce them to go to Cisco, Texas and buy 23/24 of six patented claims, Survey No.3744 from the Hefner heirs for $40,000.oo so Cosgrove told me. This No. 5 was drilled on my Charleston Mines Sweetheart Claim.

I am enclosing you a rough map of the State Leased Claims showing the approximate location of holes No. 4 and 5, also the six claims of Map No. 3744. Hole # 6 was drilled to 267 feet on Brother George Claim of the Mary Jo Group, within 10 feet of the 9 foot wide sericite vein but they did not know it. No. 7 against my advice was located about on top of the granite ridge formed by the three Tombstone Hills, drilled to 3600 feet and of course was a blank. Because of the easterly-westerly granite ridge or dike the north half of Sec. 36 has no water except the Howell Springs but the south half has an abundance.

I think all the core samples are stored at the mine - there must be a lot of them.. On my north claim of the Mary Jo Group, the L.P.W, there are three east-west parallel quartz outcrops headed toward the State of Maine and could be on the same structure - in 1951 when found them one could not own or sell gold and silver only to the Government through the Smelters - then it just was not interesting and I did not have the development money anyway - Stewart Company do not know about the possibilities of the L.P.W. Claim - they did not listen when I tried to tell them. Incidentially for your informstion I worked underground in the Couer de Alenes in Idaho years ago across the Canyon from The Hecla - I mined in the Mother Lode country in ElDorado County California and at the Charleston near Tombstone - so I am no stranger to the mining business.

Let me hear from you from time to time. My old friend Joe Escapule can tell you a lot about old man Suiter and his Charleston Mine.

Sincerely yours, Chas H Suiter

Chas. H. Suiter

JAB

August 24, 1973

MEMO TO: Edward F. Herold

RE: FILE SURVEY NOTES

Subsequent to our conversation regarding Mr. Suiter's contention on assessment work for the State claims, I decided to visit the location of the proposed drill site which we had scheduled for lease qualification on Section 36.

As a result the location now spotted for this work is exactly on the south line of Claim State #6, approximately 600 feet westerly of the southeast corner, and bears south 7° east from Hole #4. The hole is located by Brunton compass in a manner we call "line in between the two corners". It was ground marked and flagged.

On my leaving the property at 6:30PM yesterday, I met Mr. Hewlitt on the road and advised him of this location, its markings and the importance of putting the hole at this spot. Drilling in this manner will qualify for both the State claims and the lease, providing the depth is sufficient.

CAC/bde

C. A. Cosgrove

cc: C.A. Cosgrove
M. S. Horne

) 6 E JA

Charles H. Suiter

5008 West Weldon Avenue, Phoenix, Arizona 85031

Telephone 278-7974

RE
JAMES STEWART CO.
Phoenix, Ariz.

August 20, 1973

AUG 22 1973

Mr Edward Herold
James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Mr Herold:

Referring to our telephone conversation this morning regarding assessment work at the Charleston Mines - in the past two years the U.S. Supreme Court has made some vital changes in the interpretation of the 1872 Mining Laws and one authority states "it shouldbe apparent to all that that law, as generations have known it, will not survive for much more than another year. Mr Justice Douglas says "that the annual assessment work requirement of the 1872 Act is a command that assessment work worth one hundred dollars be done during each year, and any defeasance inevitably accrues to the United States, the owner of the fee title." "The United States, having what Mr Justice Douglas calls "an interest in retrieving the lands" and being intent upon "recapturing mining claims". Under new regulations a valid mining claim must stand up to the test of marketability at a profit. "In the field of law is the element of good faith more important."

For your information the above are excerpts taken from a definitive legal research manual pertaining to annual assessment work. The status of the Charleston Claims and our right to possessory title are in jeopardy. Assessment work cannot apply to more than ten claims in a group.

I have made a rough plat and a consolidation of the Mary Jo Group of 12 claims and the State Group of eight claims - it is not offered as an accurate map but it is close enpugh to lead one to the monuments established by the B.L.M Survey No. 4599 approved by B.L.M March 5, 1963.

I have indicated by circle marked No.1 hole on the L.P.W claim - this claim is in the trend line with Hewlett"s State of Mine and has same type of mineralization - I took a sample there in 1951 that gave 3.9 oz Gold and 81.3 silver - at that time Roosevelt's executive order 208 had gold and silver mining shut down and there was no market for gold and silver except to U.S.Govt thro smelters. Am enclosing copy of assay. Hole 1 should be drilled in one of several quartz outcrops.

I also show No.2 hole at the north-east corner of Chief Justice claim, this hole too is in the State of Maine trend. Holes 1 and 2 may give us a new vein. Hole No. 3 location is at the bottom of a deep trench I cut across the vein on the west end of Brother George clain in Sept. 1960 when your neglect forced me at ladt minute to do the assessment work. Both walls show plenty of sericite, a 10 foot hole in bottom will give more sericite and extend our vein.
Hole No. 4 should becdrilled in the top of a good looking veim lying next to the granite outcrop that was exposed by buildozer at top of road up on side hill. This could be an all new veim of copper and silver.

I can get these four tests made and sampled and assayed for $500.oo - This will take a driller and two helpers which are included. Your one Joy Hole will not be sufficient. I will look to hear from you soon.

Suiter

Hand copy Sent 8/31/73-sf

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

August 28, 1973

Telephone 278-7974

RE
JAMES STEWART
Phoenix, Arizona

James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85031

Attention Mr Herold

AUG 30 1973

Dear Mr Herold:

I have spotted on my claims map the location of the assessment validation hole being drilled on the Mary Jo Claim North 63° West 240 feet from the south-east corner of said claim and I am sorry to say it does look NOT good.

According to Johnathan Gordon, a former Tombstone Mining Geologist, who was familiar with the Tombstone Mining District and the Charleston claims, there is a 50-50 chance that your drill rig is parked on the top of an andesite dike that out-crops at a point 90+ feet north of the collar of the Brother George No. 5 shaft and runs eastward forming the footwall of our sericite vein, an unknown distance - Nash No.2 churn drill 128' south of Mary Jo No. 3 shaft contacted this andesite at a depth of 340 feet.

The gully east of the old working and the two houses marks a north-south cross fault cutting the andesite and blocking our sericite vein - according to Gordon the vein divides here, one forking north east toward Connecting Links claim and the other fork south east - in this direction a hole dug for power line pole hit sericite at two feet. East of the gulley Nash and Teten cored a hole at the south end of a surface scalped area in the andesite for total depth of 300 feet. Your chances in between the forks are slim.

Under the Mining Laws as they have been revised the past two years, assessment work on a claim must benefit the claim - since it is already known that there is a substantial mineral deposition on the Mary Jo claim it cannot be benefitted further by the hole you are drilling and might be damaged - also this hole on the Mary Jo will not benefit the several claims lying to the north and west. It is doubtful if this Mary Jo qualifies as adequate assessment work.

The drill hole on State No. 6 claim must be located well north of the south line of the claim. Twenty years ago Neil Vogel shipped five cars of good but oxidized ore from a patented claim just south of road, I have copies of settlement sheets, this hole of yours may give you the same at about 100 feet and watch out for rich silver pockets at shallow depth. Because of future need for more water drillers should carefully check and measure water tables - there is no water in north half of Section 36, but plenty in south half near and below road. I would like a copy of the log of each well or hole. Thank you...

Suiter

B.C. - 346

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

May 3, 1972 RECEIVED

Mr Edward Herold
James Stewart Company
Mayer Central Building
Phoenix, Arizona 85012

Dear Mr Herold:

I thank you for mailing me the Charleston check which was received yesterday.

I got a little kick out of your mentioning the sale of the Charleston Mine. Early in the deal I had a Howard Davis, an Engineer, and a Mr Logan from Midland, Texas who had studied the property, worked out their plans for operation along with the Charleston side of a deal, then I took them to see Mr Horne. They were sort of over whelmed by the affluency of the Stewart office and they wondered why Stewart did not put the mine in operation then Mr Horne told them in effect that the mine could not be profitably operated and they quit cold.

NO INFORMATION

Then a year or two later a Hecla Engineer spent part of three months examining the mining property, about the time he was ready to start serious negotiations he met Howard Jones who told him that he Jones,owned the mine. That was the end of Hecla's interest.

At the outset there was no intention and no provision in our agreement, for a sale or assignment of the mining property. when this became apparent, although my help was never solicited, I offered my help and co-operation to the Stewart Company in their efforts to make a deal - I did this for the reason that I am certain that no major company will enter into a deal based on our present agreementfor the reason that it is not a mining contract - major companies have their own special forms of contract which they insist on using which requires contact with and co-operation of the record owner. Had the mine been put in operation and production as originally intended I have felt that between the Charleston Mines and the Stewart Company the implications and ambiguities in the agreement could be amicably worked out - major companies demand specifics. I am still ready, able and willing to help the Stewart Company in any reasonable way.

I have made allowance for the fact that the Stewart Company are not experienced mining folks - they have acted upon a lot of bad advice and most everything thye have done has been contrary to sound mining practice. Under the mining law and numerous court decisions it is their duty to protect and preserve and improve our mine and the Mary Jo claims in an effort to eventually produce minerals - that was the intent of the Federal Mining Laws in the first place. Instead they have destroyed our property and down-graded the mines mineral potential.

Hecla investigated area.

941

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

I have a copy of a recent treatise, a legal research manual pertaining to annual assessment work and maintenance of possessory title to unpatented mining claims published by the Rocky Mountain Mineral Law Foundqtion. In the PREFACE it states; " all miners and prospectors should know by now, the United States Supreme Court can --and does--change the mining law. And in this there is a lesson: The mining law is not immutable: the courts are not insensitive to changed conditions, and lawyers and mining landmen must be alert to recent developments in the law of assessment work, a subject of great importance to small prospectors and large mining companies alike." "The manual treats Of the general topic of assessment work under the General Mining Law of 1872 - now a century old, when it should be apparent to all that that law, as generations have known it, will not survive for much more than another year."

The Manual further states "There are pending in Congress a number of bills which would eliminate all vestiges of the 1872 law and make prospecting on the public domain, particularly, and mine development and mineral production to some extent as well, discretionary with some elected or appointed official of the Executive Branch."

The above is a few of the high points - our mining Laws have been abd are very liberal and generous which many people of the present generation, have come to resent - Conservationists and others are advocating that old mining claims on public lands that are not producing mineral be retrived by the Government and then lease to qualified operatrs(miners) subject to a royalty to the Federal Government.

Since 1947 to 1957 inclusive, the Charleston Mine was under production. development and ore sales - since Stewart come in 1957 no mineral has been developed, produced and sold - this places our claims in jeopardy.

If Howard Jones had talked to me before he made those two shipments of dirty ore that did not pay the freight, I would have told him how to adjust our classifier and he could have rewashed and sold $60,000. in metals. The record of my shipments show that I did it to the extent of $40,000. out of 4000 tons of crude ore with the sericite going down the creek. It would have been a simple process - the ore was handy to the mill and he had help of the two boys from Seattle - Dohorty and Clements.

There is much more that should be talked over but I am limited for time and space. This letter is intended to be helpful and not to harass anyone.

Sincerely,

Suiter

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

August 11, 1971

RECEIVED

AUG 13 1971

JAMES STEWART COMPANY
PHOENIX, ARIZONA

Mr Edward F. Herold, Controller
James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Mr Herold:

I am enclosing you a copy of the recorded labor affidavit with respect to the assessment work on the Charleston Mines claims for the current assessment year along with receipt of Arizona Land Department (copy) for the annual rental of $120.oo paid by the Charleston Mines. I am returning your check for the reason that the rental has already been paid. Since the eight state claims are on a year to year basis we are advised that in order minimize an already confused situation the Charleston should pay the annual rental even tho Stewart Company have the benefit of the water therefrom.

These eight claims are the ones that Turley and Cosgrove did not want to be bothered with. I started to locate the eight claims in 1954 and run into trouble with the State Land Department who advised me that all of Section 36 was state school land and before I resumed mining operations on the Mary Jo I must obtain a State Mineral Lease. I fought with them several months before I could convince them that our claims were located in 1928 on federal land that was not surveyed until 1947, therefore we had prior rights. I finally convinced them - see enclosed Land Department letter.

In the spring of 1957 I resumed my job of locating the state claims, working alone. I had mapped the new claims surrounding and extending the claim lines of the Mary Jo group and at the time of our deal I had four of them measured and monumented. I wanted these eight claims for the reason that they offered the only source of and adequate water supply for the Mary Jo mine. Turley was not impressed but to placate the "old Man" a vague reference was made to the claims with no agreement on the part of any one to buy or sell.

The Stewart Company mining venture in Cochise is in quite a mess, and I am one of the few persons who can help them as I have offered many times to do over the past fourteen years. The potential of our State Claims in Section 36 is far beyod the capability of either the Stewart Company or the Charleston Mines - some major mining company must join us and in this connection a full disclosure of all conditions must be made - let us work together in this undertaking that promises so much.

Sincerely,

Suiter

President
Charleston Mines.

August 5, 1971

Mr. Charles H. Suiter, President
Charleston Mines, Inc.
5008 West Weldon Avenue
Phoenix, Arizona 85031

Dear Mr. Suiter:

Enclosed is James Stewart Company check in the amount of $120.00 payable to Arizona State Land Department in payment of annual rent due for Lease M-786, which are the eight State claims you are selling to us.

For purposes of the affidavit, Hole #5 was drilled on the Sweetheart claim and Hole #6 on the Brother George claim. Holes were drilled by Joy Manufacturing Company, 900 Woodland Avenue, Michigan City, Indiana 43660. Hole #5 was commenced August 3, 1970 and completed October 13, 1970. Its total depth was 2528 feet. Hole #6 was commenced on October 16, 1970 and drilling was stopped October 20, 1970 after drilling to a depth of 237 feet.

In addition to the expenditures for drilling during the current year, consulting fees concerning these claims were paid to Mr. C. A. Cosgrove, now retained on a consulting basis with our company, and to Hewitt Enterprises, R.D. #1, Box 978A, Sandy, Utah 84070, for geophysical work.

Please let me know if you need additional information in order to sign the affidavit.

Sincerely yours,

Edward F. Herold, CPA
Controller

EFH/bde
Enc.

cc: C.A. Cosgrove

CHARLES H. SUITER
5008 WEST WELDON AVENUE
PHOENIX, ARIZONA 85031

RECEIVED

July 7, 1971

JAMES
P.

Memo to Mr Horne:

The Copper stained rock I told you about, can be found at a spot about 1200 feet more or less west and north of the gate that enters onto our mine road. This green stained rock as I recall, is not a surface outcrop but comes from a shallow hole that was dug by old-timers. Twenty years ago there was plenty of it in evidence but rock hounds depleted the pile.

About this same spot can be seen evidence of some old trenching work where a miner took out $45000.oo in horn silver (Cerargyrite) and never got below his shoulders - according to Johnathan Gordon, an old Mining Engineer who spent most of his adult life in the Tombstone area. Years ago it was a common opinion that this area concealed many rich silver pockets - your core drill might find one good enough to sink on.

I have always been concerned about our claims markings - our monuments and posts. In 1962 Robert Lenon, Mineral Surveyor, made an official map of our twelve Mary Jo claims which was approved by the Bureau of Land Management - Lenon marked the corners with a pipe sunk in the ground and a brass cap all of which could be obliterated by a bull-dozer. According to Lenon's map the south-west corner of the Woolery claim is almost directly under the Telephone Line. From this point west about 300 feet there should be a 4 x 4 post set on the Land Grant (Tenneco) fence line, marking the north-west corner of the State No. 2 claim - 600 feet south there should be another 4 x 4 post marking the south-west corner of State No. 2. It might be well to check these and other claim marking. Cattle some times rub them over and some two legged animals steal them.

In my humble opinion ~~opinion~~, the three Charleston Hills, almost in line north-east and south-west, are surface evidence of only a part of a massive intrusive granite ridge or dike and it appears to me that your drill hole, located between and in line with the hills, may be over the top of the intrusion and therefore you may contact the Magma granite at a higher level than you expect. The location does not appear favor able to find a sedimentary mineral deposition at depth but for your sake, I hope I am wrong.

My best wishes for your good luck.

Suiter

E 961

June 21, 1971

Mr. M. S. Horne,
3033 N. Central
Phoenix, Ariz.

Dear Mr. Horne,

Mr. Suiter's letter June 8, 1971 alleges error on my part in the location of Drill Hole #1 on the map sent to him.

Mr Suiter is confusing our Diamond Drill Hole locations which I had shown on the map with the second of three churn drill holes. The churn drill holes were drilled looking for water, the assaying of the second being incidental. We do not consider them of any value, geologically, as all three are within the volcanic sill. The three churn drill holes were drilled about 1958.

very truly,

[signature]

49 953

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix, Arizona 85031

CHAS. H. SUITER, President

June 8, 1971

RECEIVED
JUN 1971
JAMES STEWART COMPANY
PHOENIX, ARIZONA

Mr M.S.Horne, President
James Stewart Company
Phoenix, Arizona 85012

Re: State Mineral Lease No. 786

Dear Mr Horne:

I have received from the State Land Department a statement for $120.00 for the annual rental on our eight mineral claims for the ~~current~~ next year due August 19, 1971 along with forms for reporting material removed from said claims and for reporting and filing the usual assessment work affidavit.

To assist me in preparing the required affidavit, will you kindlytell me the names of the drilling contractor who drilled holes No. 5 and 6 and the approximate depth of each hole, and the names of other persons who had a part in the drilling or any other work on the claims? I am certain that the cost of these two holes was in excess of the required $2000.00 expenditure for the assessment year 9/1/70 to 9/1/71, for our twenty claims - 12 in the Mary Jo Group and 8 in the State Group.

Several months ago I gave you a map on which Mr Cosgrove plotted the location of your several drill holes and returned to me. I suggest that he might be wrong about the locations on the claims of several of your drill holes. He shows No. 1 hole located in the north-west corner of the Father Lode claim. This hole was actually drilled about 200 ft east of the S/W corner of State Claim No. 5 at a point considered to be about the center of the Eight State claims for which it was the discovery or Locatipn as it is now called. This hole was 476 ft deep and assayed a trace of gold for almost its full depth, it made 10 to 12 gallom water per minute.

The water well was drilled in the south-east corner of State No. 6 claim, it was not sampled but it should have been. Well No. 4 Mr Cosgrove shows about properly located - it is located by my measurement about 810 ft north of the well on a directline between the well and the 30 ft tank on the hill to the north. Of course a holes location and elevation is not important unless an Engineer wishes to correlate the formations and structure between holes which is a good practice. I have not the least idea where holes No. 2 and 5 should be shown on the claims map.

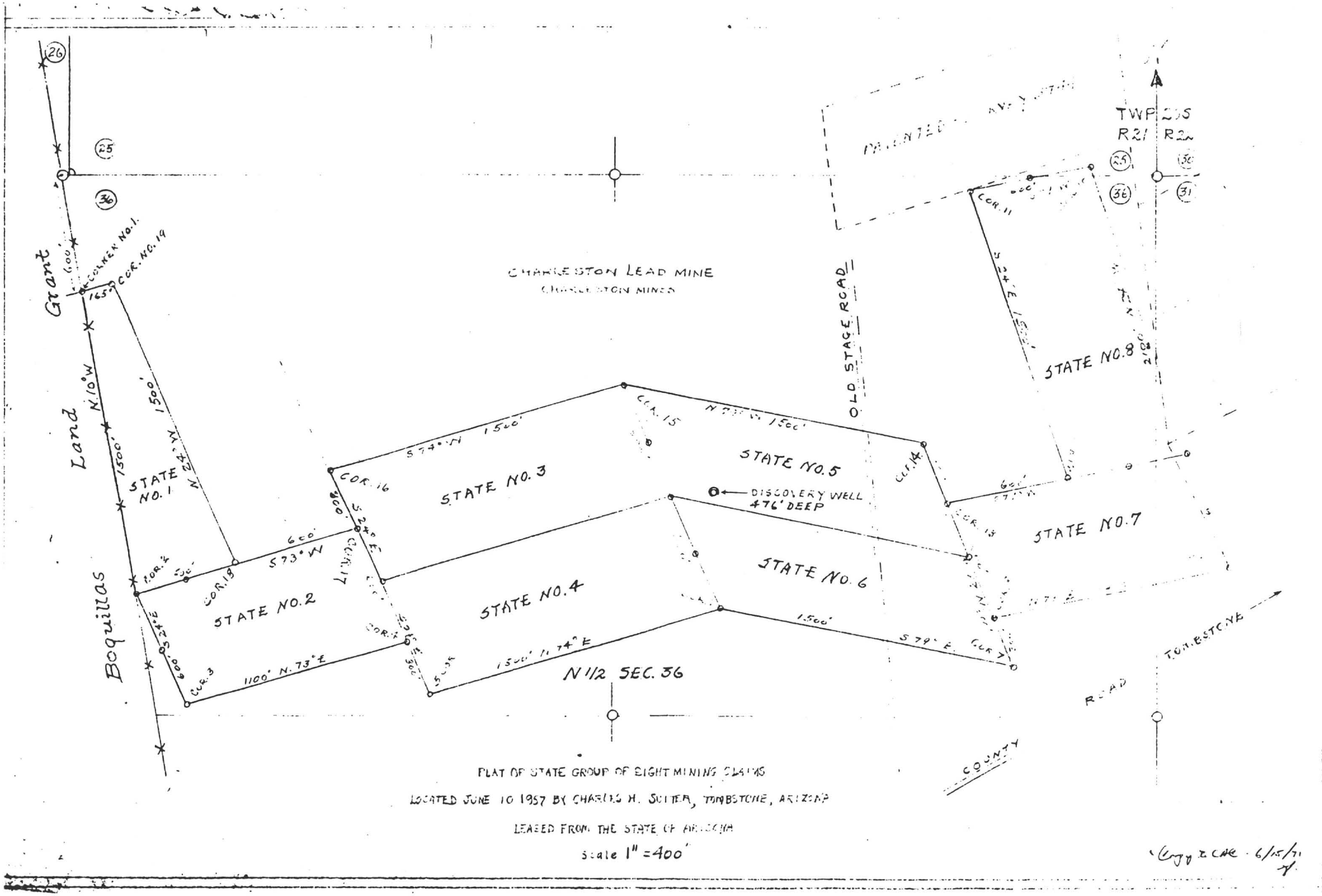
Kindly send me the assessment work information. Thank you....

Very truly yours,

Suiter

Charleston Mines....

Copy to Cole 6/15/71 (4)



PLAT OF STATE GROUP OF EIGHT MINING CLAIMS

LOCATED JUNE 10 1957 BY CHARLES H. SUTTER, TOMBSTONE, ARIZONA

LEASED FROM THE STATE OF ARIZONA

Scale 1" = 400'

CHARLESTON MINES INC.
SUCCESSOR TO

CHARLESTON LEAD MINES COMPANY

UNINCORPORATED
BOX 347

TOMBSTONE, ARIZONA

CHARLES H. SUITER
GENERAL MANAGER

Office: 5008 W. Weldon, Phoenix, 85031

January 11, 1971

Mr M.S.Horne, President
James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Mr Horne:

When I talked to you some time ago about your core drill hole # 5, you mentioned that the formations your core drill encountered were badly disturbed and showed no correlation or conformity with the formations your drill intersected in your # 4 hole.

After we timbered No. 4 shaft I attempted to drift to the east on the 52 foot level and immediately encountered what I thought was just a big rhyolite boulder but after cross-cutting both north and south right angle to our vein we found it to be a wall probably related to the cross-fault some competent engineers have predicted. When we needed an exit at the east end of the pit we had to drill and blast to get through the wall. and into the nearby gully. This cross fault very likely accounts for the unconformity of your holes # 4 and # 5. Johnathan Gordon, a noted mining engineer and metallurgist, and long familiar with the Charleston Mine and the Tombstone area, contended that our sericite vein split or forked to the north through the Connecting Links claim but to the south he would not state, caused by a cross fault north and south that was marked by the gully east of the pit.

I am enclosing you one of my old unground maps showing the relative location of my No. 4 shaft both on surface and underground and the wall by red line.

It has long been my opinion that the Charleston sericite vein is a big chimney that has sneaked into the south side of the wide altered zone bringing up with the sericite much copper, lead and zinc sulphides from what could be an immense body of rich ore. A 3000 foot hole drilled on the structure and in the faulted zone might have been very rewarding.

My Charleston Mines Corporation will hold its annual shareholders meeting Monday January 18th 1971 - if you happen to have some encouraging information in the meantime, I will be glad to have and report it.

Sincerely yours,

Suiter

President
Charleston Mines

G.C.

E 205

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix 31, Arizona

CHAS. H. SUITER, President

December 28, 1970

RECEIVED

Mr M.S.Horne, President
James Stewart Company
Phoenix, Arizona 85012

Dear Mr Horne:

I have received from Mr Cosgrove the claims map showing the approximate location of your~~#6~~ core hole recently drilled, which location appears to be quite close to the Nash # 2 hole.

From my old files I have resurrected Dr Gaines' report on the Charleston Mine dated Sept. 10, 1962 and his very good surface map of the mine area. This map shows the five vertical holes core-drilled by Nash-Vogel and their churn drill hole # 2, also five 45 degree angle holes drilled by Dr Gaines (Heron Mng Co.)

The Gaines Report states that Nash # 2 hole, located 340' west of Heron # 10, intersected 18 feet of Sericite (true width 9'). With this information it was hardly worthwhile to drill your # 6 in practically the same area. There are several, more desirable and perhaps more informative drill locations, 1st: on the strike of the vein 150 or 200 feet west of Nash # 2. 2nd: in the bottom of the pit, a horizontal core hole in the south wall to locate the position and slope or angle of the granite wall and to test the vein lying against the granite and the area in between. 3rd: a deep hole in the structure or fault approximately 400' north of north bank of pit and about on the west line of the Chief Justice claim - because of a north-south fault cutting the vein, care must be exercized and not get too far to the east.

In his report Dr Gaines states on page 10, in an area from 40' east of his # 7 to 40' west of # 10, 285 ft by 305 ft deep, there is 86,000 tons of sulphide and sericite ore, which he states, after mining, milling, freight and taxes will net $1,050,000. figuring in 1962 lead at 9½¢ and zinc at 11½¢. Today's prices are Lead 14½¢ and zinc 15¢.

The Gaines report states further, "There is every reason to expect that this same formation should continue in depth, to double or more the 305 feet. In addition it is known that Nash-Vogel intersected 18' of sericite (9' true width) in their hole # 2, also sericite is visable in an outcrop on Connecting Links over 1100' N 75 degrees east of the pit. Obviously there is plenty of room for exploration with the promise of multiplying present reserves several fold."

On page 4 Dr Gaines states: "Giluly has mapped a major East-West fault which passes through the Charleston Mine area. This fault is supposed to be one mile long, --- then it must be considered that this altered zone continues some what farther to the north, perhaps two or three hundred feet north of the present working, to where the fault actually is."

Dr Gaines' report confirms my long contention that exploration work should be conducted near the known mineral vein and north of the pit.

Sincerely yours,

Chas H. Suiter

Charleston Mines...

October 18, 1965

Mr. Charles H. Suiter
5008 West Weldon Avenue
Phoenix 31, Arizona

Dear Mr. Suiter:

Reference is made to your letter of September 21, 1965 wherein you transmitted copies of the affidavits relating to assessment work for the Charleston Mines. I have delayed this letter pending a meeting with Mr. Harlow Jones, but as this will be further delayed, I felt I had better answer your letter.

We were pleased to hear of your feelings concerning the prospects of the vein continuing to depth and the possibility of copper being the dominant metal at the greater depths.

We concur with your recommendation that a horizontal hole drilled into the south wall of the pit would reveal interesting information on the outcrops occurring above the pit. This suggestion will be relayed to Mr. Jones and his group.

The preliminary proposed core drill hole was not 800 to a 1000 feet to the south, but just over 250 further south measured from CD2, designed to intercept the vein at top depth of 800' assuming same vein dip. However, it was also recommended that no drilling be done prior to a geophysical study and an I. P. tracing of the property to properly ascertain the proper hole locations.

We have notified the Jones group of the churn drill holes which were drilled to search fir water and furnished them with assay information received.

To avoid any recurrence of ill advised financial expenditures on the subject property, it is our intention not to sink a shaft as proposed in your letter nor to invest in a mill until the ore body has been determined, both as to extent and content, and the mill then properly engineered. For this reason, we must take exception to your deadline of production by April 1, 1966.

We propose to keep you advised of progress made in any negotiations and in developments occurring.

Very truly yours,

JAMES STEWART COMPANY

C. A. Cosgrove

CAC:lp

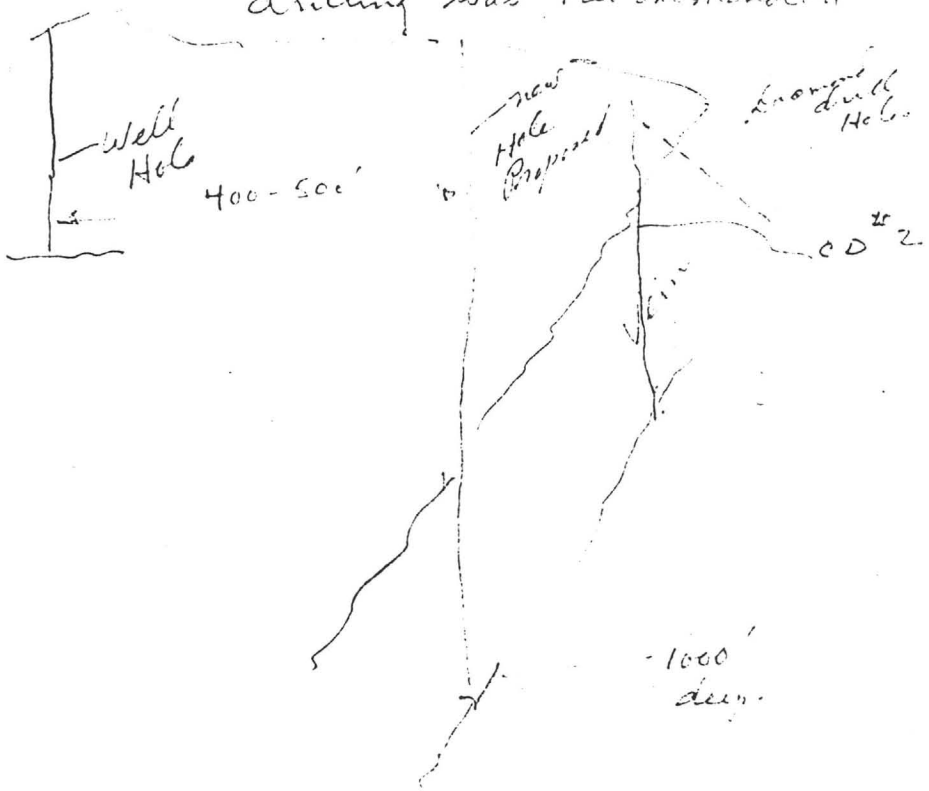
RP

1st No Comment

2nd Then why object to drilling a deep hole

3 - Harlow and others have been advised of this drilling. was a hole to locate water (one ± 2 holes)

400 - 500 feet to the south of where the proposed drilling was recommended



#4 – we are not anticipating one on the south side

#5 – no comment.

#6 (a) Horizontal drilling to intersect & study the Vein south of the present Pit would provide excellent info.

(b) This -50° dip. recommendation would not give very good results. Not good practice to drill parallel to vein.

#7 – 6 Months ultimatum –

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix 31, Arizona

CHAS. H. SUITER, President

September 21, 1965

Mr C.A.Cosgrove
James Stewart Company
Phoenix, Arizona 85012

Dear Mr Cosgrove:

Enclosed is copy of assessment affidavit relating to the Charleston Mines - the original has been recorded in the records of Cochise County. I am not too happy over the sufficiency of the work indicated in the affidavit but since Mr Jones is on the property and is presumably continuing some work, it will pass.

In your letter of the 30th August you stated that you had the impression that I did not believe that the vein extends to any appreciable depth - on the contrary, it is my opinion, based on information gleaned from several competent engineers and from my own underground experience on the property, that our present known sericite vein will continue in more and better ore to a depth of several hundred and perhaps a 1000 feet or more and at depth copper may be the dominant metal, as was the case at Butte, Montana where they have a surface condition very similar to the Charleston.

In connection with your proposed geological study preliminary to drilling, I suggest that you inform your engineer about the churn drill hole which you drilled in July 1957 in the area you are now considering, to a depth of 476 feet, all in igneous rocks, several samples of which showed traces of gold. You no doubt have the log of this well and its location can no doubt still be determined.

In the past eight years I have seen so much of the money of the Stewart Company and others wasted in ill-advised and incompetent work at the Charleston that I am adverse to seeing any further such performance. Unless another unknown vein might be found on the south side of the granite hill, your chances of encountering worth while ore with your core drill, are about one in twenty.

The report of Dr Gaines, a highly touted engineer, stated in effect that in the area between old No. 4 shaft and old No. 2 shaft (about 350 ft) and 300 ft deep there is a block of 86,000 tons of ore of a gross value of over $ 4 million dollars. I developed that block of ore - my tonnage estimate is much higher. With lead at 16¢, zinc at 14½¢ and mica at $100.+ per ton, prices are very favorable and will likely continue high or higher for some time to come. The sinking of a shaft as I recommended in my letter of August 28th, will in my opinion make available for mining, Dr Gaines' 86,000 tons and more - enough ore at 50 tons per day to last several years and the initial cost for sinking and equipping the shaft will be less than the cost of drilling two 800 ft core holes.

There is one drill location that in my opinion would reveal interesting information - a horizontal core hole drilled into the south wall of the pit to the granite (approximately 200-250 ft) that outdrops up on the side hill, would locate the granite and define its incline if any, at the same time permit sampling of a 20 ft vein (shown at the surface) that lays against this granite - then from the same drill location, run a core hole into the vein at about 50 degree south incline angle to as deep as you wish to go, probably all in ore.

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix 31, Arizona

CHAS. H. SUITER, President

The north wall of the granite ridge, exposed on the north side of the hill, is undoubtedly the hanging wall of our present sericite fissure vein - this wall may be vertical or it might slope or incline to the north, contrary to the assumed south incline of our sericite vein. In any event, in my opinion it is unreasonable to assume that our sericite vein continues to dip south under that granite hill to the extent of finding it with a core drill hole located 800 to 1000 feet to the south - it is my opinion that our sericite vein does not dip to the south that much. In this connection it is significant to note that on the north side of the granite ridge, several churn drill holes have not found water, while on the south of this ridge water is found at shallow depths in quantity. About three-quarters of a mile south of our workings an old shaft 100 feet deep makes water rated at 200 gallon per minute.

With 86,000 tons of ore above 300 feet, according to Dr Gaines, and with present good metal prices, there can now be no reasonable excuse for further delaying production of metals a nd sericite. I must insist therefore that action be taken and necessary work performed with the view of having the mine under production by April 1, 1966 - this gives you over six months time in which to sink and equip a shaft that will make available in my opinion, enough ore to last several years. Failing in this will make your contract subject to cancellation. I am sure that you can appreciate the iniquity of a production contract that takes over 35 years to pay out.

Also kindly instruct your book-keeper that the $500.oo monthly check must be in my hands on or before the 10th day of ea ch month.

Very truly yours,

Chas. H. Suiter

Charleston Mines...

761

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix 31, Arizona

CHAS. H. SUITER, President

August 28, 1965

Mr C.A.Cosgrove
James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85012

Dear Mr Cosgrove:

Confirming our telephone conversation of yesterday afternoon - Mrs Suiter and I visited the mine on Thursday and Friday of this week. On Friday morning we found that a D-12 Cat had arrived and was busy cutting a road to a core drill location, with Harlow Jones at the controls. Harlow said that the truck had returned to Benson to pick up a D-24 - as we were returning to Phoenix about one o'clock we met the truck loaded with the D-24 just south of Benson, so I feel quite certain that both Cats are now at the mine and working.

I told Harlow that the assessment work was the most urgent at the moment and I suggested that he take the cats over about 1000 feet west of No. 5 shaft to a trench we had previously dug across the vein and that he enlarge that trench in both length and width. Erosion and detritus from the hill has obscured the vein in this area - the proposed trench will not only expose substantial vein material but will make visible the best location for a core drill hole or an exploratory shaft in the vein. Before we sunk No. 5 shaft, we had to dig a long trench to the vein before we could decide upon the right spot on which to sink. I am sure the D-24 with a ripper will handle this ground - this will be assessment work that can be both seen and measured. I will have a report from Joe Escapule in a few days regarding the assessment work then I can complete and file the annual assessment affidavit.

With regard to futire work, Mr Jones stated that he was committed to the Stewart Company to perform 2800 feet of deep core drilling with the view of intersecting and testing the vein at a depth of 800 or 1000 feet. Now I am not presuming to dictate how Mr Jones should spend his money but I hate to see him waste a dollar or several thousands of dollars so with you permission I wish to give you the benefit of my experience and study of the Charleston over a period of the last twenty years.

The plan to undertake the drilling of an 800 to 1000 ft core hole calls for an intensive geological study of the area by a competent engineer before deciding upon the location to start the hole and I am convinced that such a study would result in the abandondment of such a plan at the present time.

The range of hills extending for four miles or more, running S-W and N-E north of Charleston of which our hill in Section 36 is a part, is a massive granite intrusion of which our mineralized fault on the north side of our hill is also a part and undoubtedly formed at the time of the granite uplift - the vein filling of sericite and sulphides caused by hydro-thermal action. This granite hill undoubtedly extends to a great depth therefore a core hole would give only granite and more granite. The depressed saddle over the crown of the hill might well be another different vein.

Most folks acquainted with the Charleston have assumed that our sericite vein

Charleston Mines
INCORPORATED

5008 West Weldon Avenue, Phoenix 31, Arizona

CHAS. H. SUITER, President

has an incline of 55 to 65 degrees to the south and most of my shafts were sunk at this angle mainly for working convenience - the assumption of 55-65° incline of the vein has resulted from the andesite dike which appears to be the footwall of our sericite vein, the south wall or vein side has a south incline of about 60°. Contradicting this assumed vein angle of 60° is an exposure up on the side hill of the granite of which the hill is composed - this granite exposure is badly weathered and decomposed and shows no definite inclination one way or another and it could be about vertical - without doubt this granite is the hanging wall of our sericite vein, which indicates 250 feet or more of vein width. In my opinion, it is highly improbable that a randomly located core drill hole on the hill will give satisfactory results, and would cost approximately $16,000.oo.

I suggested to Mr Jones that he spend his money where we know the ore is. In his report Dr Gaines said we have in the area of No. 3 and No. 5 shafts, 86,000 tons of ore having a gross value of $50.oo per ton or over four million dollars. I am one of a very few persons who have actually seen this ore and know the extent of it because I developed that ore body and am confident that Dr Gaines' estimate could reasonablly be doubled. How much more ore does any one want? At a sensible estimate of a 1000 tons per month per month there is enough ore in this one little spot ~~yet~~ to last for ten years.

To get this ore, I suggest sinking a good shaft in the andesite footwall at a point about mid-way between No. 3 and No.5 and fifty feet or more north of the vein, to a depth of 150 or 200 feet and cross-cutting from this shaft to the vein at the 100 ft, 150 ft and 200 ft levels. Such a shaft 200 ft deep with the three cross-cuts and adequate hoisting equipment will cost approximately $20,000.oo.

Mr Jones seemed to be favorable to the shaft sinking as a substitute to the core drilling but he says he has to have your O.K. I am enclosing some maps I promised Harlow - after you look them over kindly send them too him along with your approval or rejection of the shaft plan. I am also sending you a copy of this letter which you may send to Harlow along with the maps.

Kindly advise me of your reaction.

Very truly yours,

Chas. H. Suiter

CHARLESTON MINES—TOMBSTONE, ARIZONA

KAOLIN ZINC GROUND MUSCOVITE LEAD COPPER

CHARLES H. SUITER, PRESIDENT

FINANCIAL STATEMENT OF THE CHARLESTON MINES

as of July 31, 1963

ASSETS

James Stewart contract for purchase of mine	$250,000.00	
Paid on contract to July 31 1963 - - -	67,100.00	
Balance due on contract as of 7/31/63 - - - - - - - - - - - -		$ 182,900.00

LIABILITIES

Authorized Capital 300,000 shares common, par $1.00		
Originally issued 200,000 shares - - - - -	$200,000,00	
Shares repurchased and redeemed 42,200 - -	42,200.00	
Capital shares remaining outstanding - - - - - - - - - -		$ 157,800.00
Surplus under Stewart Contract - - - - - - - - - - - - -		25,100.00
		$ 182,900.00

#*#*#*#*#*#*#*#*#*#*#*#*#*

The Charleston Mines was incorporated November 1 1955 under the laws of Arizona for twenty-five (25) years. The 1963 annual report has been filed and the 1963 annual fee has been paid - the corporation is in good corporate standing.

The Charleston Mines is the record owner of possessory title to twelve (12) unpatented mining claims in Cochise County, Arizona, which were sold under a contract dated June 1st 1957 to the James Stewart Company of Phoenix for the sum of $250,000.00 on which contract there has been paid $67,100.00, leaving a balance due under the contract of $182,900.00 as of July 31 1963.

RECEIVED

NOV 6 1970

JAMES STEWART COMPANY
PHOENIX, ARIZONA

E-164

Nov 6, 1970

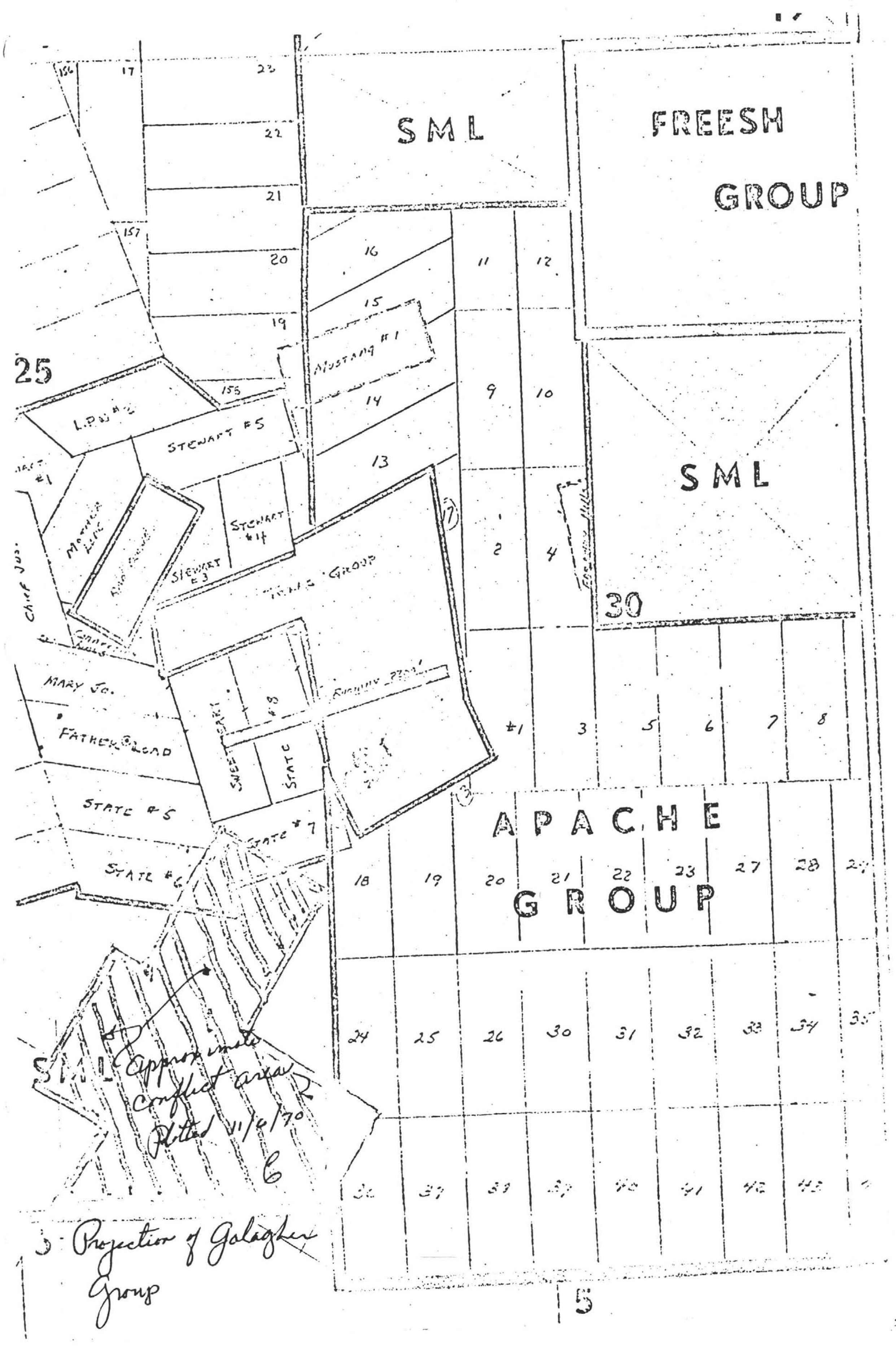
M.S. Horne,

Wednesday morning, while I was in your office, you gave me a print showing the Charleston Claim Holdings and a print of the northerly portion of the Galaxy group which Harlow is interested in. As ~~nearly~~ closely as possible from data available I have overlaid the conflicting area on the map showing the Charleston Holdings. The area is crosshatched and covers about 40% of the State Mineral Lease area in section 36 and projects into claims State 6 & 7.

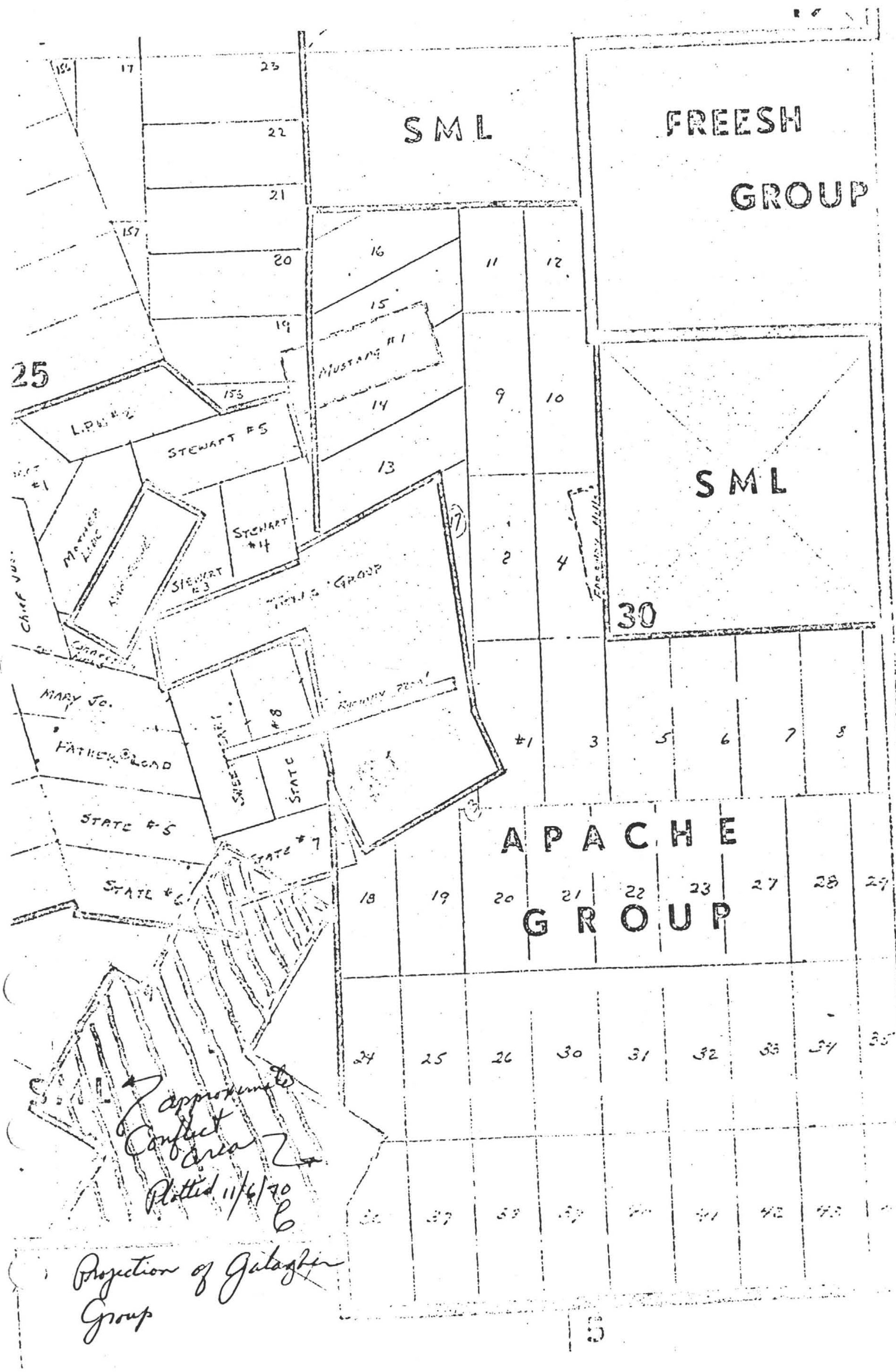
This conflict represents quite an important portion of the mine area which we believed to be clear. The State did not recognize these to be valid claims nor to my knowledge have cognizance of them, except for the patented claims.

BC

Enc. 2 prints Zerox - conflict shown


SML
FREESH
GROUP
25
SML
30
APACHE
GROUP
MUSTANG #1
STEWART #5
STEWART #4
STEWART #3
MARY JO.
FATHER LOAD
STATE #5
STATE #7
STATE #6
SML
Approximate conflict area
Plotted 11/6/70
6
5
Projection of Galagher Group

26



SML
FREESH GROUP
SML
25
30
L.P. #2
STEWART #5
STEWART #4
STEWART #3
MUSTANG #1
MARY JO.
FATHER ROAD
STATE #5
STATE #6
STATE #7
STATE
APACHE GROUP
Approximate Conflict Area
Plotted 11/6/70
Projection of Galagher Group

TRANSAMERICA TITLE INSURANCE COMPANY

LIMITED SEARCH REPORT TYPE 3 (See schedule on reverse side)

NUMBER Sp.Base 748 DATE 11/6/70 @7:50 A.M. FEE $89.00

ISSUED FOR THE SOLE USE AND BENEFIT OF:

RECEIVED

JAMES STEWART COMPANY
PHOENIX, ARIZONA

James Stewart Company
3033 North Central
Phoenix, Arizona 85000

hereinafter called USER.

After examination, for the purpose stated above, of the proper indices affecting property or liens or encumbrances upon property in the County of Cochise, State of Arizona.

TRANSAMERICA TITLE INSURANCE COMPANY
A CALIFORNIA CORPORATION

in consideration of payment of its fee, and acceptance hereof with liability to the USER limited to twice the amount of such fee, reports that a search of the following described property

Unpatented mining claims;

MAGGIE, AURORA, MAY POWELL, STELLA and
BLANKET # 1, 2, 3, 4 and 5.

subsequent to January 1, 1940, discloses:

1. Mining Location, Blanket # 1, by Gallagher, Vanadium and Rare Minerals Corporation recorded November 25, 1925, in Book 63, Records of Mines, page 521.

2. Mining Location, Blanket #2, by Gallagher, Vanadium and Rare Minerals Corporation recorded November 25, 1925, in Book 63, Records of Mines, page 522.

3. Mining Location, Blanket # 3, by Gallagher, Vanadium and Rare Minerals Corporation, recorded November 25, 1925, in Book 63, Records of Mines, page 523.

4. Mining Location, Blanket # 4, by Gallagher, Vanadium and Rare Minerals Corporation, recorded November 25, 1925, in Book 63, Records of Mines, page 524.

5. Mining Location, Blanket # 5, by Gallagher, Vanadium and Rare Minerals Corporation, recorded November 25, 1925, in Book 63, Records of Mines, page 525.

Continued:

TRANSAMERICA TITLE INSURANCE COMPANY

By Martin D. Bailey
Martin D. Bailey

FORM A-92 REV. 1/68
mh

SCHEDULE OF LIMITED SEARCH TYPES REFERRED TO ON REVERSE SIDE

All reports issued hereunder are based upon an examination of the proper indices for a stated purpose and for the period of time (if applicable) prescribed below. All such reports are without examination or report as to the sufficiency or validity of any instruments shown.

1. JUDGMENT LIEN REPORT - *Fee: $10.00 per name, plus $2.00 per lien reported*
   Indices searched - Judgments, Renewal of Judgments, Federal and State Liens in the office of the County Recorder of the county shown on the reverse side.
   Purpose - a showing of any money judgment or tax lien against persons or corporations named on reverse side which would appear to constitute a lien on real property.
2. TAX AND IMPROVEMENT LIEN REPORT - *Fee: $5.00 plus $2.00 per parcel over one*
   Indices searched - records of County Treasurer and the Superintendent of Streets of the county and the Treasurer and Superintendent of Streets of any city or town named on the reverse side.
   Purpose - a showing of unpaid state, county, city or town taxes, liens or assessments levied under any general or special improvement act against the real property described on the reverse side.
3. CHAIN OF TITLE REPORTS - *Fee: $30.00 plus $1.00 per item reported*
   Indices searched - land indices in the Title Plant of the company's issuing office.
   Purpose - a showing subsequent to a stated date, of instruments or matters affecting or relating to the record title of the land described on the reverse side.
4. PROPERTY SEARCH REPORT - *Fee: $20.00 plus $5.00 per parcel reported over one*
   Indices searched - taxes assessed in a stated name in County Treasurer's office and the County Recorder's indices under a stated name.
   Purpose - showing a description of land, title to which was acquired under or assessed to a stated name and not thereafter conveyed.
5. LIMITED REALTY REPORT - *Fee: $20.00*
   Indices searched - land indices in the Title Plant of the company's issuing office.
   Period of time - 10 years next preceding date of this report.
   Purpose - showing apparent record owner and a list of recorded mortgages and agreements of sale not satisfied of record.
6. SECURED PROPERTY TRANSACTION, CHATTEL MORTGAGE & CONDITIONAL SALE REPORT - *Fee: $65.00*
   Indices searched - Secured Property Transactions, Chattel Mortgage & Conditional Sale in office of County Recorder.
   Period of time - Chattel Mortgage and Conditional Sale from a stated date to December 31, 1967; Secured Property Transaction from January 1, 1968 to date.
   Purpose - a showing of any matters not shown as released in said indices executed by persons or corporations named on the reverse side.
7. FINANCING STATEMENT SEARCH REPORT - *Fee: $25.00 per search; bulk search quoted on request*
   Indices searched - Financing Statements in the office of the Secretary of State.
   Purpose - a showing of any matters not shown as released in said indices executed by persons or corporations named on the reverse side.
8. SPECIAL REPORT

ALL REPORTS ISSUED PURSUANT TO THE SCHEDULE ABOVE REPRESENT A LIMITED TITLE SERVICE AND NOT COVERAGE BY A POLICY OF TITLE INSURANCE.

TITLE INSURANCE, IF REQUIRED AND APPLICABLE, IS AVAILABLE AT THE PUBLISHED RATE FOR THE TYPE AND AMOUNT REQUIRED.

6. Mining Location, Aurora, by Chas Hoyt, Jose Hamilton and Christine Hamilton, recorded February 26, 1912, in Book 49, Records of Mines, page 168.

7. Mining Location, Maggie, by Mrs. J. N. Gallagher, recorded June 18, 1923, in Book 62, Records of Mines, page 303.

8. Mining Location, Stella,by Mrs. J. N. Gallagher, recorded June 18, 1923, in Book 62, Records of Mines, page 304.

9. Mining Location, May Powell, by Mrs. J. N. Gallagher, recorded November 28, 1923, in Book 62, Records of Mines, page 522.

10. Proof of Labor, by Jules B. Gallagher, recorded July 13, 1940, in Book 53, Miscellaneous Records, page 452. (ALL claims)

11. Proof of Labor, by J. Frank Jones, recorded June 23, 1941, in Book 54, Miscellaneous Records, page 172. (Maggie)

12. Proof of Labor, by Jules B. Gallagher, recorded July 3, 1941, in Book 54, Miscellaneous Records, page 203. (All)

13. Notice to Hold, by Mrs. Louis Reuter, filed June 19, 1942, Fee No. 2628. (Stella, Aurora and May Powell)

14. Notice to Hold, by Gallagher, Vanadium and Rate Minerals Corporation, filed June 25, 1943, Fee No. 2289. (All)

15. Notice to Hold, by R. J. Powell, Filed June 23, 1944, Fee No. 2664. (All)

16. Notice to Hold, by Jules B. Gallagher, filed June 27, 1944, Fee No. 2784. (All)

17. Notice to Hold, by Jules B. Gallagher, filed June 29, 1945, Fee No. 3165. (All)

18. Notice to Hold, by R. J. Powell, filed June 30, 1945, Fee No. 3203. (All)

19. Notice to Hold, by Mrs. Louis Reuter, filed June 22, 1946, Fee No. 5076. (Aurora, Blanket 1 thru 5, Maggie and May Powell)

20. Notice to Hold, by J. B. Gallagher, filed June 25, 1946, Fee No. 5142. (Aurora, Maggie, May Powell and Stella)

21. Notice to Hold, by Mrs. Louis Reuter, filed February 15, 1947, Fee No. 1275. (Aurora, Maggie, May Powell& Stella)

LIMITED SEARCH REPORT # 3:
Continued:

22. Notice to Hold, by Mrs. Louis Reuter, filed June 19, 1942, Fee No. 2629. (Blanket 1 thru 5)

23. Proof of Labor, by J. B. Gallagher, recorded September 25, 1942, in Book 54, Miscellaneous Records, page 541. (Maggie, May Powell)

24. Notice to Hold, by J. B. Gallagher, filed June 25, 1946, Fee No. 5140. (Blanket 1 thru 5)

25. Notice to Hold, by Mrs. Louis Reuter, filed February 15, 1947, Fee No. 1276. (Blanket 1 thru 5)

26. Notice to Hold, by Lucy A. Jones, filed June 27, 1942, Fee No. 2826. (Maggie)

27. Notice to Hold, by J. Frank Jones, filed June 5, 1943, Fee No. 2007. (Maggie)

28. Notice to Hold, by B. B. Watkins, filed June 8, 1945, Fee No. 2723. (Maggie)

29. Notice to Hold, by B. B. Watkins, filed June 18, 1946, Fee No. 4970. (Maggie)

30. Notice to Hold, by Mrs. Louis Reuter, filed June 21, 1947, Fee No. 4675. (All)

31. Proof of Labor, by Mrs. Louis Reuter, recorded June 28, 1948, in Docket 10, page 29. (All)

32. Notice to Hold, by Jules B. Gallagher, filed June 29, 1948, Fee No. 5052. (All)

33. Affidavit of labor by Jules B. Gallagher, recorded June 17, 1949, in Docket 27, page 59. (All)

34. Notice to Hold, by Jules B. Gallagher, filed June 17, 1949, Fee No. 5037. (Aurora, Maggie, May Powell & Stella)

35. Proof of Labor, by Jules B. Gallagher, recorded September 25, 1950, in Docket 45, page 170. (Aurora, Blanket 1-5, Stella & Maggie)

36. Affidavit of labor, by Anthony T. Deddens, recorded June 27, 1951, in Docket 56, page 226. (All)

LIMITED SEARCH REPORT # 3:
Continued:

37. Notice to hold, by Jules B. Gallagher, filed June 17, 1949, Fee No. 5038. (Blanket 1 thru 5)

38. Proof of Labor, by Bert B. Watkins, recorded June 20, 1947, in Docket 53, page 388. (Maggie)

39. Notice to Hold, by Mrs. Louis Reuter, filed June 30, 1947, Fee No. 5009. (Aurora,Maggie,Stella, May Powell & Blanket 1-5)

40. Affidavit of labor by C. Neil Vogel, recorded June 4, 1952, in Docket 70, page 151. (All

41. Affidavit of labor by C. Neil Vogel, recorded May 28, 1953, in Docket 85, page 628. (All)

42. Affidavit of labor by C. Neil Vogel, recorded April 16, 1954, in Docket 100, page 421. (All)

43. Affidavit of labor, by Mrs. Louis Reuter, recorded July 28, 1955, in Docket 129, page 498. (Stella,Aurora,Blanket, & Blanket 1,2 and 4)

44. Affidavit of labor, by W. B. Gorden, recorded July 12, 1956, in Docket 149, page 504. (Blanket, Blanket 1,2,4, Stella and Aurora)

45. Affidavit of labor, by W. B. Gorden, recorded June 17, 1957, in Docket 170, page 202. (All)

46. Affidavit of Labor, by W. B. Gordon, recorded May 22, 1956, in Docket 146, page 481. (Blanket 3 & 5, Maggie & May Powell)

47. Affidavit of Labor, by Jules B. Gallagher, recorded July 3, 1958, in Docket 193,page 587. (All)

48. Affidavit of labor, by Thomas W. Mitcham, recorded September 2, 1959, in Docket 225, page 206. (All)

49. Affidavit of labor, by Jessie Gallagher Quigley, recorded August 15, 1960, in Docket 253, page 491. (All)

50. Notice of Mining location, by Jules B. Gallagher, recorded December 8, 1958, in Docket 203, page 388. (Blanket 4)

51. Affidavit of labor, by C.Neil Vogel, recorded August 30, 1960, in Docket 254, page 620. (Blankets 1-5, Stella, Maggie, etc.)

Continued:

LIMITED SEARCH REPORT # 3:
Continued:

52. Affidavit of labor, by C. Neil Vogel, recorded October 1, 1963, in Docket 337, page 262. (Blanket, Stella, etc.)

53. Affidavit of labor by C. Neil Vogel, recorded November 5, 1964, in Docket 368, page 398. (Blanket, etc.)

54. Affidavit of labor by W. B. Gorden, recorded August 30, 1967, in Docket 497, page 500. (All)

55. Affidavit of labor, by Lester Foran, recorded August 23, 1968, in Docket 554, page 5. (All)

56. Notice of Non-liability by C. Neil Vogel, recorded January 11, 1967, in Docket 456, page 67. (Stella, Blanket, etc.)

57. Affidavit of labor by G. B. Gorden, recorded August 22, 1969, in Docket 602, page 427. (All)

58. Affidavit of labor by C. Neil Vogel, recorded November 12, 1970, in Docket 666, page 44. (All)

NOTE: The first nine items are dated prior to 1940 and are shown only to establish Location Notices- All Items subsequent to 1940 were found by a search of the recorders indices under the name of the claims.

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It's annual assessment time for holders of unpatented mining claims and the music of steel striking against rock is making the Lomas de Plata (hills of silver) ring around-about this old mining camp these days.

The general mining law calls for the expenditure of at least a hundred dollars per year per claim. The money, or labor, may be used further explore and develop the property.

Final date for nineteen sixty-eight/sixty-nine assessment work is midnight, August thirty-first.

... of Labor Performed and Improvements Made

... E } ss:

W.B. Gorden being duly sworn, deposes ... tizen of the United States and more than twenty-one years of age, and resides at ... Box 51 in Cochise County, State of Arizona, and is personally acquainted with the mining claims known as Gallager- Bradshaw# 1.2.3. Blanket# 1-2-3-4-5-6-7-8-9. S tell ?, May Powell, Maggie, Side Shot, Necessity, Union Flag, Aurora.

Mining Claims, situate in Tombstone Mining District, County of Cochise, State of Arizona, the location notices of which recorded in the office of the County Recorder of said County, in Book 61-62-67-69- of Records of Mines, at Page 9-10-26-27-38 39-40-41-54-55-56-57-58-88-255-270-522-523 524-525-527. that between the First day of March, A.D. 1969, and the 20Th. day of August, A.D. 1969, at least Twenty Two Hundred Dollars ($2200.00) dollars' worth of work and improvements were done and performed upon said claims not including the location work of said claims. Such work and improvements were made by and at the expense of W.B.Gorden, & Lester Foran & V. A. Hrbacek P.O.Box. 36004 Houston, Texas Owner of said claims are Gallager Vanadium & Rare Mineral s Corporation.

owners of said claims for the purpose of complying with the laws of the United States pertaining to assessment of annual work and Daniel Mal ino, Robert Milton Box 234. Tombstone, Ariz. Gilbert Barrios & Carlos Durrarte & Frank Otero & Carlos Figueroa, All Of Benson, Arizona Watchman and Truck driver Luther Boram Box. 51 Benson, Arizona were the men employed by said owners and who labored upon said claims, did said work and improvements, the same being as follows, to-wit:

Installing Equipment Dewatering Mine extending drift

W B Gorden
~~Claim Owner or~~ Agent

Subscribed and sworn to before me this 21st day of August, A.D. 1969

Sharon L. Gilless
Notary Public.

(My Commission Expires June 1, 1971)

NOTARY PUBLIC

STATE OF ARIZONA } ss:
COUNTY OF COCHISE

Witness my hand and Official Seal

JAMES O. DIXON
County Recorder

H Whate Deputy

Indexed	Photostat Compared	Blotted
B	B	B.

Fee $2.00

Docket DKT 602

I hereby certify that the within instrument was filed and recorded at request of

G. B. Gorden
Box 36004
Houston, Texas 77036

Date AUG 22 1969 1:00 PM

Page 427 No. 13009

'68 Assessment
re GVRM Claims

Affidavit of Labor Performed and Improvements Made

STATE OF ARIZONA
COUNTY OF COCHISE } ss:

Lester Foran being duly sworn, deposes and says that he is a citizen of the United States and more than twenty-one years of age, and resides at P. O. Box 51 Benson in Cochise County, State of Arizona, and is personally acquainted with the mining claim known as Gallagher Bradshaw 1-2-3 Blanket# 1-2-3-4-5-6-7-8-9, Stella May Lowell, Maggie, Sice Shot Necessity, Union Flag, Aurora.

Mining Claim, situate in Tombstone Mining District, County of Cochise, State of Arizona, the location notice of which recorded in the office of the County Recorder of said County, in Book 67-68-67-69. of Records of Mines, at Page 9-10-36-37-38-39-40-41-54-55-56-57-58-88-~~155-270-~~ that between the 1st day of March, A.D. 1968, and the 22 day of August, A.D. 1968, at least ~~Twenty Four Hundred, $2400.00~~ dollars' worth of work and improvements were done and performed upon said claim not including the location work of said claim. Such work and improvements were made by and at the expense of Lester Foran, 603 Wilson Building Corpus Christ, Texas OWNER of said claims are. Gallagher Vanadium & Rare Minerals Corporation. owner of said claim for the purpose of complying with the laws of the United States pertaining to assessment of annual work and Daniel Malino, Frank Otero. Luther Boram, Robert Malino, ~~Robert Fred~~ Robert Fedrico. were the men employed by said owner and who labored upon said claim, did said work and improvements, the same being as follows, to-wit: Completing Power line, Replaced or collared Stella Shaft. Put Timber in San Antonio Shaft Also extended drift.

Lester Foran
Claim Owner or Agent

Stella M. Brauch Notary Public Cochise County, Arizona

Subscribed and sworn to before me this 23rd day of August, A.D. 1968

(My Commission Expires June 14, 1970)

Stella M. Brauch
Notary Public.

STATE OF ARIZONA
COUNTY OF COCHISE } ss:

Witness my hand and Official Seal
JAMES O. DIXON
County Recorder
Deputy

Fee $1.75

Indexed	Photostat Compared	Blotted

I hereby certify that the within instrument was filed and recorded at request of
Lester Foran
603 Wilson
Corpus Christi, Texas
78401

Date AUG 23 1968 - 11 15 AM

Docket DKT 554 Page 5 No. 15[illegible]

CAB GROUP

975

MEMORANDUM June 2, 1969

TO: M. S. Horne

RE: Mining Claims with Apparent Current Valid Status in and near Charleston Area.

only valid claim known in area 6-27-84

(1) Mustang 1

Located 2/7/1950 by Frank Frederick. Assessment shaft approximately 120' deep. Runs generally northeast from the west line of the southwest 1/4 of Section 30, T 20 S, R 22 E.

East end line is west approximately 390' from the southwest corner Apache #11, and this claim lies in the area of Apache #14 and #15 and will control over the latter location.

(2) Faraway Hills

Now owned by Lawerance Clark. Purchased from Ray Dugan. Borders the southeast side of Section 30, Southeast 1/4. Cuts in diagonally to the State 1/4.

(3) The Quartzsite) All on the State SE 1/4, Section 30,
The Southside) except a small sliver of
The Full Moon) The Quartzsite.

(4) There are located along the Charleston road a number of painted posts; many of them are on the State 1/4 (i.e. SE 1/4, Section 30). I could find no semblance of valid location or assessment work for claims if such they are. Mr. Clause, who has lived on the SE 1/4 of Section 30 for 13 years, advised me he had never seen any work, assessment or otherwise, in connection with these posts. It seems they were put in at the time Mr. Suiter made his sale to JSC.

As directed, I have located claims in Sections 30 and 31, T 20 S, R 22 E -- taking them in my name as Trustee for the owners you will name. These claims are the Apache Group numbered 1 through 26. Within 90 days, location drilling should be done and posts set on the south line of Claims 24, 25 and 26 and the north line of 11 and 12. As these are a contiguous group, one hole can serve for 20 claims (200' deep). Another hole 60' deep would complete the work. A 200' hole, correctly located, would probably be of considerable value for geology. Pending further geophysical work, locating further claims in Section 31 would probably not be advisable.

C. A. Cosgrove

CAC:ef

ROCKY GROUP

CHIPPO GROUP

Harvey 276

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DOUGLAS, ARIZONA 85607

MARTIN F. RYAN
MICHAEL J. HERBOLICH
ARTHUR C. ATONNA
WALLACE R. HOGGATT

TELEPHONE
AREA CODE 602
364-7961

December 20, 1982

Mr. M. Seth Horne
Mr. Harvey L. Hayes
James Stewart Company
707 Mayer Central Bldg.
3033 North Central Avenue
Phoenix, AZ 85012

Re: James Stewart Company v. Cattany

Gentlemen:

Enclosed is an order from the Arizona Supreme Court denying Cattany's Petition for Review. In other words, the decision of the Court of Appeals has been upheld.

Sincerely,

RYAN, HERBOLICH, ATONNA
& HOGGATT, Ltd.

By: Wallace R. Hoggatt
WALLACE R. HOGGATT

WRH/vp

Enc.

DEC 16 1982

RYAN, HERBOLICH, ATONNA & HOGGATT, LTD.

Supreme Court

STATE OF ARIZONA
201-WEST WING
CAPITOL BUILDING
(602) 255-4536
Phoenix 85007

S. ALAN COOK
CLERK

ANNA L. CATES
CHIEF DEPUTY CLERK

December 15, 1982

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE: W. W. GRACE,

Plaintiffs/Appellees,

vs.

ROBERT E. CATTANY and JUNE L. CATTANY, husband wife,

Defendants/Appellants.

Supreme Court No. 16302-PR

Court of Appeals No. 2 CA-CIV 4371

Cochise County No. 40466

The following action was taken by the Supreme Court of the State of Arizona on December 14, 1982 in regard to the above-entitled cause:

"ORDERED: Petition for Review = DENIED."

Record returned to the Court of Appeals, Division Two, Tucson, this 15th day of December, 1982.

S. ALAN COOK, Clerk

By Anatosha Manuel
Deputy Clerk

TO:
Robert E. Cattany, Esq., 4530 E. River Road, Tucson, Arizona 85718
Arthur C. Atonna, Esq. and Wallace R. Hoggatt, Esq., Greenwood, Ryan, Herbolich & Atonna, Ltd., 855 Cochise Avenue, Douglas, Arizona 85607
Elizabeth Urwin Fritz, Clerk, Court of Appeals, Division Two, 416 West Congress, Tucson, Arizona 85701

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MICHAEL J. HERBOLICH
ARTHUR C. ATONNA
WALLACE R. HOGGATT

TELEPHONE
AREA CODE 602
364-7961

November 19, 1982

Mr. M. Seth Horne
Mr. Harvey L. Hayes
James Stewart Company
707 Mayer Central Bldg.
3033 North Central Avenue
Phoenix, Arizona 85012

Re: James Stewart Company v. Cattany
No. 2CA-CIV 4371

Gentlemen:

Enclosed is a copy of a Petition for Review received yesterday from Mr. Cattany.

We must wait for the Arizona Supreme Court to decide whether it will review the case. I'll let you know the result.

Truly yours,

RYAN, HERBOLICH, ATONNA
& HOGGATT, Ltd.

By: Wallace R. Hoggatt
WALLACE R. HOGGATT

WRH/vp

Enc.

279

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION @

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W.W. GRACE,

Plaintiffs/Appellees,

v.

ROBERT E. CATTANY and JUNE L. CATTANY, husband and wife,

Defendants/Appellants

2 CA-Civ 4371

Cochise County No. 40466

PETITION FOR REVIEW

Appellants petitions the Supreme Court of Arizona to review the decision of the Court of Appeals in this matter. Appellants' motion for rehearing in the Court of Appeals was denied on November 3, 1982.

Dated November 17, 1982.

Robert E. Cattany

Robert E. Cattany
4530 E. River Road
Tucson, Arizona 85718
Attorney for Appellants

Copy ofs the foregoing
mailed this 17th day of
November, 1982, to:

Greenwood, Ryan, Herbolich & Atonna, Ltd.
855 Cochise Avenue
Douglas, Arizona 85607
Attorneys for Appellees

By Robert E. Cattany

Harvey

LAW OFFICES OF
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DOUGLAS, ARIZONA 85607

MARTIN F. RYAN
MICHAEL J. HERBOLICH
ARTHUR C. ATONNA
WALLACE R. HOGGATT

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AREA CODE 602
364-7961

November 8, 1982

Mr. M. Seth Horne
Mr. Harvey Hayes
James Stewart Company
707 Mayer Central Bldg.
3033 North Central Avenue
Phoenix, Arizona 85012

Re: James Stewart Company v. Cattany

Gentlemen:

Enclosed is a copy of the Order of the Court of Appeals dated November 3, 1982. The Order denies Cattany's Motion for Rehearing, although it corrects the two minor errors of the Court's Opinion.

Cattany has 15 days to file a Petition for Review with the Arizona Supreme Court.

Truly yours,

RYAN, HERBOLICH, ATONNA
& HOGGATT, Ltd.

By: Wallace R. Hoggatt
WALLACE R. HOGGATT

WRH/vp

Enc.

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAMES STEWART COMPANY, an Arizona corporaton; M. SETH HORNE; W. W. GRACE,

Plaintiffs/Appellees,

v.

ROBERT E. CATTANY and JUNE L. CATTANY, HUSBAND AND WIFE,

Defendants/Appellants.

2 CA-CIV 4371

O R D E R

(COCHISE County Superior Court Cause No. 40466)

IT IS ORDERED that Appellants' Motion for Rehearing is DENIED; and

IT IS FURTHER ORDERED that this court's Opinion filed October 1, 1982, is corrected in the seventh line from the top of Page 2: the date of October 8, 1979, is changed to October 18, 1979; and in the same paragraph the the last sentence is stricken and the following sentence is substituted therefor: Cattany disregarded said requests and appellants filed suit on August 19, 1981.

Dated: November 3, 1982.

Lawrence Howard, Chief Judge.

Ben C. Birdsall, Judge.

James D. Hathaway, Judge.

Copies of the foregoing Order mailed
this 3rd day of November 1982 to:

Arthur C. Atonna, Esq.
Wallace R. Hoggatt, Esq.
Greenwood, Ryan, Herbolich & Atonna, Ltd.
855 Cochise Avenue
Douglas, Arizona 85607

Robert E. Cattany, Esq.
4530 East River Road
Tucson, Arizona 85718

Hon. Lloyd C. Helm, Judge
Cochise County Superior Court
Cochise County Courthouse
Bisbee, Arizona 85603

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Ariz. Business
11/1/82
James Stewart Co. v.
Cattany
2 CA-CIV 4371
Oct. 1, 1982

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JAMES B. GREENWOOD
MARTIN F. RYAN
MICHAEL J. HERBOLICH
ARTHUR C. ATONNA
WALLACE R. HOGGATT
DAVID P. FLANNIGAN

OTHER OFFICE:
BISBEE, ARIZONA

October 22, 1982

Mr. M. Seth Horne
Mr. Harvey L. Hayes
James Stewart Company
707 Mayer Central Bldg.
3033 North Central Avenue
Phoenix, Arizona 85012

Re: James Stewart Company v. Cattany

Gentlemen:

Enclosed are copies of Mr. Cattany's Motion for Rehearing and our Objection to his Motion. His Motion does not trouble me, but in any event I shall let you know the Court's ruling.

Truly yours,

RYAN, HERBOLICH, ATONNA
& HOGGATT, Ltd.

By: Wallace R. Hoggatt
WALLACE R. HOGGATT

WRH/vp

Enc.

Rec'd Oct. 18, 1982 285
mtn.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION 2

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W.W. GRACE, Plaintiffs/Appellees, v. ROBERT E. CATTANY and JUNE L. CATTANY, husband and wife, Defendants/Appellants.	2 CA-Civ 4371 Cochise County No. 40466 MOTION FOR REHEARING

Appellants request a rehearing of the above-entitled matter for the following reasons: Appellants feel that the Court of Appeals has applied facts not supported by the Reporter's Transcript of Proceedings or the briefs in arriving at their opinion.

To enumerate, the court states that " Appellees, however, commenced assessment work on October 6, 1979, and continued the work on October 10 for the 1979-1980 assessment year.". Although the affidavit states that work was done between October 6 and October 10, the affiant, appellee W.W. Grace, admitted under oath that the only work done was on October 6, and that he did not even return to the claims until about October 20, and that visit was not for the purpose of doing any work.

The court states that "It is unclear whether any further work was done on the claims for a period of four to six weeks or until March 10 or 11, 1980, because the testimony and affidavits are conflicting.". It is true that the affidavit and the testimony of the affiant, appellee W.W. Grace, are conflicting, but that should not create an unclear picture of the facts supported by the testimony of W.W. Grace

and the other witnesses, which clearly established March 10, 1980 as the date when further work was done.

The court states that appellants relocated the property on October 8, 1979, when it was actually done on October 18, 1979, twelve days after appellees resumed their assessment work, and further states that appellants, rather than appellees, filed this suit on August 19, 1981.

However, if the court believes the judgment below is supported by appellee W.W. Grace's testimony that in his opinion the work done on October 6, 1979 was sufficient to comply with the requirements of 30 USC 28, then the foregoing may be moot. Accordingly, appellants will limit their arguments to the question of the sufficiency of appellees assessment work done on October 6. 1979.

The sufficiency of assessment work depends upon the value of the work performed and not necessarily the amount paid for it. As stated in Morrison's Mining Rights, 16 Ed., p. 121, "The test is what the work was worth, rather than what was paid for it, but what was paid for it goes to prove its value.". It is the reasonable value of the work measured in dollars to determine if the requisite amount of assessment work has been done, but no where, in federal law or elsewhere, is it provided that a 6 foot by 6 foot by 4 foot hole dug on a claim satisfies the assessment work requirement.

In this case, appellees paid a contractor $200.00 for about 8 hours of back-hoe trenching work on their mining claims on October 6, 1979. The amount appellees paid was the usual and customary rate charged by back-hoe operators in the area, and the work consisted of about 300 feet of trench averaging about 3 feet deep. There was no conflict in the testimony establishing the foregoing facts, or the fact that no further work was done on the claims until appellees hired the same contractor to do additional back-hoe work. That date was established by the con-

tractor as March 10, 1980.

Appellee W.W. Grace testified that in his opinion he thought that the cubic feet of work removed between October 6, 1979 and March 10, 1980, was more than necessary to meet the federal requirements for assessment work (page 45 of Reporter's Transcript of Proceedings). In explanation of this statement, he testified that federal regulations state that if one digs a hole six feet long, six feet deep and four feet wide, or a total of 144 cubic feet, that would qualify as the amount of work necessary for the assessment work on a claim (pages 36,47 and 48 of Reporter's Transcript of Proceedings). Thereby explaining the basis of his opinion regarding the sufficiency of the trenching done as satisfying the assessment work requirements, with no consideration of the dollar value of the work. If appellees owned their own back-hoe and operated it themselves, to determine the reasonable value of a trench they dug with it, they would have to determine what others in the area charged for the same work. The same is true if someone came onto appellees' claims with a back-hoe and dug a trench for them gratuitiously. Since appellees did hire a contractor to do their trenching and he charged the usual and customary rate, the value of appellees trenching work and the amount they paid for it would appear to be, as appellants contend, the same, namely $200.00. It is appellants position that there was no conflicting testimony regarding the value of the work done on October 6, 1979. An example of conflicting testimony on reasonable value of assessment work is found in Kramer v. Tayler, 266 P 2d 709 (Ore), where the defendant claimed to have performed 17 days of work at a reasonable value of $12.00 per day, driving a 16 foot tunnel having a reasonable value of $14.00 per foot, while the plaintiff contended that defendant only performed 16 days of work worth $12.00 per day, making only 11 feet of tunnel at a value of $14.00 per foot. The court did not disturb the trial court's decision on that matter. In Kramer v. Tayler, supra, the court cited the case of Nevada Exploration & Mining Co. v. Spriggs, 124 P 770,773 (Utah) for

the legal premise followed therein that "Where a forfeiture of a mining claim is involved, the appellate court should not disturb a finding of the trial court which prevents such forfeiture, unless it is clearly made to appear that such finding is not supported by the evidence".

Based upon the foregoing, appellants respectfully request that the court grant their motion for rehearing.

Dated October 15, 1982

Robert E. Cattany

Robert E. Cattany
4530 E. River Road
Tucson, Arizona 85718
Attorney for Appellants

Copy of the foregoing
mailed this 15th day of
October, 1982, to:

Greenwood, Ryan, Herbolich & Atonna, Ltd.
855 Cochise Avenue
Douglas, Arizona 85607
Attorneys for Appellees

By Robert E. Cattany

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W.W. GRACE, Plaintiffs/Appellees, v. ROBERT E. CATTANY and JUNE L. CATTANY, husband and wife, Defendants/Appellants.	2CA-CIV 4371 (Cochise County Superior Court Cause No. 40466) OBJECTION TO MOTION FOR REHEARING

Appellees request that Appellants' Motion for Rehearing be denied for the reason that the Opinion of the Court of Appeals is amply justified by the law and the evidence, as more particularly explained in the following Memorandum.

RESPECTFULLY SUBMITTED this 22nd day of October, 1982.

RYAN, HERBOLICH, ATONNA & HOGGATT, Ltd.

By: _____
ARTHUR C. ATONNA

By: _____
WALLACE R. HOGGATT

Attorneys for Appellees

Copy of the foregoing mailed this 22nd day of October, 1982, to:

Mr. Robert E. Cattany
4530 East River Road
Tucson, Arizona 85718

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02) 432-5791

MEMORANDUM

The issues raised in Appellants' Motion for Rehearing are without merit.

1. Appellants argue that this Court erred in stating that "Appellees ... commenced assessment work on October 6, 1979, and continued the work on October 10 for the 1979-1980 assessment year." Opinion at 1. Despite the fact that an Affidavit of Labor Performed and Improvements made substantiates work done between October 6th and October 12th (R.T. 33; Plaintiffs' Exhibit 8 in evidence), Appellants contend that no work was done on October 10th, citing alleged admissions of Appellees W. W. Grace. Appellees do not accept Appellants' characterization of Mr. Grace's testimony, and prefer to refer the Court to the transcript. In any event, however, it is not at all clear what Appellants wish to gain by such a discussion. Appellees understand this Court's Opinion to have been based upon that fact that all assessment work required by 30 U.S.C. 28 was performed on October 6th:

> "Grace testified that on October 6, 1979, $800 worth of assessment work was done on the claims.... This testimony alone, provided an adequate basis for the trial court's conclusion...."

Opinion at 3.

Similarly immaterial is Appellants' contention that the witnesses "clearly established March 10, 1980 as the date when further work was done." Motion for Rehearing at 2. (Additionally, the argument is unsound. Mr. Grace testified that he did further

work on the claims within 30 days of October 19, 1979. R.T. 51.)

Even Appellants note that these arguments do not matter. "...(I)f the court believes that the judgment below is supported by Appellee W. W. Grace's testimony that in his opinion the work done on October 6, 1979 was sufficient... then the foregoing may be moot." Motion for Rehearing at 2 (emphasis added).

2. Appellants seize upon two minor factual errors in the Opinion in support of their Motion. It is true that Mr. Cattany's attempted relocation occurred on October 18, 1979, when he posted notice of the purported "Rocky" claims. R.T. 71-72. It is also correct that Appellees, rather than Appellants, brought this action. However, these matters are not significant to this Court's decision, having apparently been noted by the Court in passing.

3. Appellants contend that the Court erred when it held that the trial court could have found that the value of the October 6th work was $800. Appellants cite the general proposition that what is paid for work is evidence of the work's value. Motion for Rehearing at 2. True enough. Appellants seem to infer from this proposition, however, that evidence of payment is therefore conclusive evidence of value. Appellants have cited no authority for such a conclusion and Appellees are aware of none. There is certainly authority to the contrary, since assessment work can be adequate even if done for free. MacDonald v. Cluff, 68 Ariz. 369, 206 P.2d 730 (1949).

Neither do Appellants submit any authority that would allow them to ignore Mr. Grace's opinion testimony about the value

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of the labor. It is well-established that an owner of property is competent to testify as to the property's value without qualifying as an expert. Atkinson v. Marquart, 112 Ariz. 304, 541 P.2d 556 (1975) (corporate good will); U.S. Fidelity & Guaranty Co. v. Davis, 3 Ariz. App. 259, 413 P.2d 590 (1966) (cattle); Town & Country Chrysler Plymouth v. Porter, 11 Ariz. App. 369, 464 P.2d 815 (1970) (automobile); Urban Renewal Agency v. Tate, 196 Kan. 654, 414 P.2d 28 (1966) (land). Why should the lessee of mining claims be precluded from testifying about the value of improvements and labor--particularly where, as here, the lessee has a great deal of mining experience?

Kramer v. Taylor, 200 Or. 640, 266 P.2d 709 (1954), does not support Appellants' position. In Kramer, the Oregon court was faced with conflicting evidence and argument concerning the value of certain work. The trial court determined that the work was worth $200. The Supreme Court upheld that determination. Appellees are unaware of anything in Kramer that requires this Court to set aside the trial court's judgment in the present case.

The value of assessment work is a question of fact. Pascoe v. Richards, 201 Cal. App. 2d 680, 20 Cal. Rptr. 416 (1962). Perhaps the trial court had the discretion to find for Appellants on the question of the value of the work performed on October 6th. It did not; it apparently chose to accept competent and credible evidence that the October 6th work had a value of $800 or more. The Court acted properly in upholding the trial court's judgment.

. . .

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For the above reasons, and those presented in the Answering Brief, Appellees respectfully request this Court to deny the Appellants' Motion for Rehearing.

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AREA CODE 602-364-7961

JAMES B. GREENWOOD
MARTIN F. RYAN
MICHAEL J. HERBOLICH
ARTHUR C. ATONNA
WALLACE R. HOGGATT
DAVID P. FLANNIGAN

OTHER OFFICE:
BISBEE, ARIZONA

October 5, 1982

Mr. M. Seth Horne
Mr. Harvey L. Hayes
James Stewart Company
707 Mayer Central Bldg.
3033 North Central Avenue
Phoenix, Arizona 85012

Re: James Stewart Company v. Cattany

Gentlemen:

Good news. The Court of Appeals has affirmed Judge Helm's ruling. Enclosed is a copy of the Court's Order and Opinion.

As you can see, the Court based its decision on Mr. Grace's testimony that the work performed on October 6, 1979, was adequate. Therefore, the Court stated that it was not necessary to discuss all the other points that had been raised. (You may notice that the Court has two minor factual errors: it states that Cattany entered and posted the property on October 8th, rather than October 18th, and also that Cattany, rather than James Stewart Company, filed the action on August 19, 1981. These are not material to the decision.)

As I wrote to you earlier, Cattany has 15 days to file a Motion for Rehearing, to which we will have an opportunity to respond. If the Motion is denied, he may petition the Arizona Supreme Court for review. It is still possible for Cattany to prevail, but I doubt it. We have cleared the big hurdle.

I'll continue to keep you informed about this case.

Truly yours,

RYAN, HERBOLICH, ATONNA
& HOGGATT, Ltd.

By: Wallace R. Hoggatt
WALLACE R. HOGGATT

WRH/vp

Enc.

STATE OF ARIZONA
DIVISION TWO

FILED
OCT 1 1982
CLERK COURT OF APPEALS
Division Two

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W. W. GRACE,

Plaintiffs/Appellees,

v.

ROBERT E. CATTANY and JUNE L. CATTANY, husband and wife,

Defendants/Appellants.

2 CA-CIV 4371

O R D E R

(COCHISE County Superior Court Cause No. 40466)

GREENWOOD, RYAN, HERBOLICH & ATONNA, Ltd., Douglas; by Arthur C. Atonna, Esq., and Wallace R. Hoggatt, Esq.,

Attorneys for Plaintiffs/Appellees.

Robert E. Cattany, Esq., Tucson,

Attorney for Defendants/Appellants.

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its Opinion.

IT IS ORDERED that the Opinion be filed by the Clerk, and under the Arizona Rules of Civil Appellate Procedure, Rule 22(a), fifteen (15) days are allowed from this date to file a Motion for Rehearing.

IT IS FURTHER ORDERED that a copy of this Order, together with a copy of the Opinion, be sent to each party appearing or the attorney for such party and to The Honorable Lloyd C. Helm, Judge, Cochise County Superior Court, retired, and to The Honorable Matthew W. Borowiec, Presiding Judge of Cochise County Superior Court.

Dated: October 1, 1982.

Lawrence Howard
Chief Judge

Copies mailed as directed
this 1 day of October,
1982.

Elizabeth Urwin Fritz, Clerk.

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& ATONNA, LTD.

the testimony and affidavits are conflicting. Nonetheless, for this subsequent work Escapule was paid $49. The uncontradicted testimony and affidavits of Grace valued the completed work at not less than $800 which would meet the requirements of 30 U.S.C. §28 as discussed below. Furthermore, Grace testified that the work done on October 6, 1979, was, by itself, $800 worth of work.

On October 8, 1979, after deciding that appellees had not completed the resumption of their assessment work in a diligent manner, appellant Robert Cattany entered and relocated the property. Location notices were recorded by Cattany on January 16, 1980. His plat map and monuments delineating his claims were intially incorrect and he amended his map and remonumented his claims on March 17, 1980, and in August 1981, respectively. During this period an agent of the appellees requested twice that Cattany cease all mining and vacate the property. Cattany, however, responded with a suit to remove appellees on August 19, 1981.

The case was heard without a jury on September 15, 1981, and the judge required that both parties submit memoranda. It is appellants' contention that the trial court should be reversed for its finding that appellees were, and had at all times been, entitled to possession of the claims.

The issue in this case is whether appellees complied with the assessment work requirement of 30 U.S.C. §28, thereby precluding forfeiture of their unpatented mining claims. Appellant raised other arguments concerning his right to possession of the claims, but because of our resolution of this issue, we need not discuss the other arguments.

The locator of a claim is required to complete $100 worth of work per year on each claim under 30 U.S.C. §28. The statute provides:

> "... [a]nd upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had even been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such relocation. ..." (Emphasis added)1/

1/ For cases holding that the resumption of the assessment work by the original locator prior to a relocation by a third person precludes a forfeiture of the original locator's rights, see Edwards v. Anaconda Co., 115 Ariz. 313, 565 P.2d 190 (App. 1977); Hartman Gold Mining Co. v.

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W. W. GRACE,

Plaintiffs/Appellees,

v.

ROBERT E. CATTANY and JUNE L. CATTANY, husband and wife,

Defendants/Appellants.

2 CA-CIV 4371
O P I N I O N

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. 40466

Honorable Lloyd C. Helm, Judge

AFFIRMED

GREENWOOD, RYAN, HERBOLICH & ATONNA, Ltd.
by Arthur C. Atonna and Wallace R. Hoggatt
Douglas

Attorneys for Plaintiffs/Appellees

Robert E. Cattany
Tucson

Attorney for Defendants/Appellants

H O W A R D, Chief Judge.

This is an appeal from a judgment in favor of appellees in a forcible entry and detainer suit brought to determine the possession of eight unpatented federal lode mining claims. The eight claims, known as the Hornes #110-117, were located by M. S. Horne on September 21, 1967, and later leased to W. W. Grace on October 1, 1979.

Apparently no assessment work was done for the assessment year ending August 31, 1979. Appellees, however, commenced assessment work on October 6, 1979, and continued the work on October 10 for the 1979-1980 assessment year. The work was performed by John Escapule under Grace's supervision. At that time, Grace had worked with mining claims for 48 years. Escapule was paid $200 for his services.

It is unclear whether any further work was done on the claims for a period of four to six weeks or until March 10 or 11, 1980, because

In order for the resumption of the work to have the effect of precluding relocation by a third person, the work must be resumed in good faith, be prosecuted with reasonable diligence and with a bona fide intention of completing it. Strattan v. Raine, 45 Nev. 10, 197 Pac. 694 (1921); Winters v. Barkland, 123 Ore. 137, 260 Pac. 231 (1927); Crane v. French, 39 Cal.App.2d 642, 104 P.2d 53 (1940). In the absence of evidence to the contrary, it will be presumed that the annual work was resumed in good faith. Temescol Oil Mining & Development Co. v. Salcido, 137 Cal. 211, 69 Pac. 1010 (1902).2/

If such work is resumed, the claim is not subject to relocation while it continues and a relocation made while work is being performed is invalid even if the assessment work is thereafter abandoned before the requisite amount is completed. Jupiter Mining Co. v. Bodie Consolidated Mining Co., 11 F. 666 (9th Cir. 1881); Jordan v. Duke, 6 Ariz. 55, 53 Pac. 197 (1898). Appellant contends the evidence does not show that appellees diligently prosecuted the resumption of the assessment work nor that the value of the work done was at least the required $800. We do not agree.

Grace testified that on October 6, 1979, $800 worth of assessment work was done on the claims. This consisted of the digging of a ditch by a backhoe, 300 feet long averaging 2½ to 3 feet deep. In some places it was 5 feet deep. The test is the value of the work done and not the amount paid to do the work. Schlegel v. Hough, 182 Ore. 441, 186 P.2d 516 (1947). This testimony alone, provided an adequate basis for the trial court's conclusion. There was no issue about proceeding diligently since the required work was done in one day. When appellant entered the claims on October 8, 1979, he was a trespasser and his locations were invalid. Jupiter Mining Co. v. Bodie Consolidated Mining Co., supra.

Affirmed.

1/ (cont'd.)
Warning, 40 Ariz. 267, 11 P.2d 854 (1932); Whitwell v. Goodsell, 37 Ariz. 451, 295 Pac. 318 (1931); Cadle v. Helfrich, 36 Ariz. 390, 286 Pac. 186 (1930).

2/ See also McCormick v. Baldwin, 104 Cal. 227, 37 Pac. 903 (1894); Hirschler v. McKendricks, 16 Mont. 211, 40 Pac. 290 (1895); Honaker v. Martin, 11 Mont. 91, 27 Pac. 397 (1891).

LAWRENCE HOWARD, Chief Judge.

CONCURRING:

JAMES D. HATHAWAY, Judge.

BEN C. BIRDSALL, Judge.

F 300

GREENWOOD, RYAN, HERBOLICH & ATONNA, LTD.
ATTORNEYS AT LAW

JAMES B. GREENWOOD
MARTIN F. RYAN
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TELEPHONE (602) 432-5791

855 COCHISE AVENUE
DOUGLAS, ARIZONA 85607
TELEPHONE (602) 364-7961

PLEASE REPLY TO: DOUGLAS

December 9, 1981

Mr. Harvey Hayes
James Stewart Company
3033 North Central Avenue
Phoenix, Arizona 85012

Re: Stewart vs. Cattany

Dear Mr. Hayes:

Enclosed is a copy of the Judgment which you requested.

Very truly yours,

GREENWOOD, RYAN, HERBOLICH
& ATONNA, Ltd.

By: P Gregory
Peggy Gregory
Secretary

Encl.

SUPERIOR COURT OF ARIZONA

COUNTY OF COCHISE

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W. W. GRACE, Plaintiffs, v. ROBERT E. CATTANY and JUNE CATTANY, husband and wife, Defendants.	NO. 40466 JUDGMENT

This matter having come on regularly for trial September 15, 1981, and the Plaintiffs present in person and by counsel, and the Defendants present by ROBERT E. CATTANY, and the Court having considered the testimony of witnesses, the evidence and memorandum submitted, it is

ORDERED, ADJUDGED AND DECREED that:

1. The Defendants are guilty of forcible detainer.

2. The Plaintiffs have judgment for the restitution of the premises described as mining claims Horne 110 through 117 as located and situated in the northeast one quarter of Section 20, Range 22 East, Township 20 South, G.S.R.B. & M. Cochise County, Arizona, Tombstone Mining District.

3. The Plaintiffs are now and at all times involved herein have been entitled to the possessory rights in and to the premises described as Horne No. 110 through 117, and more

particularly described in paragraph two above, and that such rights are paramount to those of the defendants.

4. The Plaintiffs shall have its costs in the sum of $116.25.

DONE IN OPEN COURT this 16th day of ~~October~~ November, 1981.

JUDGE OF THE SUPERIOR COURT

GREENWOOD, RYAN, HERBOLICH & ATONNA, LTD.
ATTORNEYS AT LAW
888 COCHISE AVENUE
DOUGLAS, ARIZONA 85607

STATE OF ARIZONA] ss.
COUNTY OF COCHISE]

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED AT REQUEST OF:

WITNESS MY HAND AND OFFICIAL SEAL
CHRISTINE RHODES, COUNTY RECORDER

FEE $ $3.00

DEPUTY

DRAFT

INDEXED | PHOTOSTAT-COMPARED | PLOTTED

DATE NOV 23 '81 - 1 00 PM

DOCKET 1551 PAGE 484 NO 24115

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GREENWOOD, RYAN, HERBOLICH & ATONNA, LTD.
ATTORNEYS AT LAW
120 NORTH HIGHWAY 80
P. O. BOX 4340
BISBEE, ARIZONA 85603
(602) 432-5795

STATE OF ARIZONA
COUNTY OF COCHISE ss.

The for going instrument is a full, true and correct copy of the original on file in this office.

Attested November 18, 1981
ELLEN M. YOUNG, Clerk
By Deputy

Bisbee office copy

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SUPERIOR COURT OF ARIZONA

COUNTY OF COCHISE

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W.W. GRACE, Plaintiffs, vs. ROBERT E. CATTANY and JANE DOE CATTANY, husband and wife, Defendants.	NO. 40466 COMPLAINT (Forcible Entry & Detainer & Declaratory Judgment)

COME NOW the Plaintiffs, by and through their attorneys, GREENWOOD, RYAN, HERBOLICH & ATONNA, Ltd., and as and for their claim for relief allege and pray as follows:

I.

Now and at all times relevant to this action, all parties hereto have either been doing business in Cochise County, Arizona, caused acts or events to occur within Cochise County, Arizona, which give rise to this cause of action, or reside within Cochise County, Arizona. Furthermore, ROBERT E. CATTANY and JANE DOE CATTANY are husband and wife now and at all times relevant to this action and all events or acts by ROBERT E. CATTANY were done in furtherance of marital community objectives.

II.

On or about October 18, 1979, ROBERT E. CATTANY, executed a Location Notice for mining claims 1320 feet long and 660 feet wide as to areas more particularly described in Exhibit "A" attached hereto and made a part hereof by reference.

III.

On or about March 17, 1980, Defendant ROBERT E. CATTANY executed and amended location notice as to areas more particularly described in Exhibit "B" attached hereto and made a part hereof

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by reference.

IV.

The Plaintiffs are owners, lessors or lessees or otherwise entitled to possession of certain mining claims known as Horne #110 through #117 as more particularly described on Exhibits "C" through "J" attached hereto and made a part hereof by reference.

V.

Written notice has been given to Defendant ROBERT E. CATTANY by the Plaintiffs of the encroachment by Defendant CATTANY onto the same area where the Plaintiffs' mining claims exist. Said notices are in the form of Exhibits "K" and "L" attached hereto and made a part hereof by reference.

VI.

On or about October 6, 1979, annual assessment work on Plaintiffs' mining claims Horne #110 through #117 was commenced thus precluding an abandonment of Plaintiffs' claims at any time during which the Defendants claim rights to or a relocation of said claims as herein alleged.

VII.

Defendant ROBERT E. CATTANY has changed the location of mining claims in violation of A.R.S. Section 27-202C by interfering with the rights of the Plaintiffs.

VIII.

Defendant ROBERT E. CATTANY has failed to comply with the provisions of A.R.S. Title 27 regarding mining and location of claims to the possessory detriment of the Plaintiffs.

IX.

By Arizona and Federal statutes, the Plaintiffs have possessory rights to Horne #110 through #117 which rights Defendants claim by adverse interest.

X.

Defendants purported possession of claims are void for failure

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to locate properly sized claims pursuant to 30 U.S.C.A. Section 23.

XI.

Defendants' acts infringe upon Plaintiffs' rights to quiet peaceable possession of the described mining claims pursuant to 30 U.S.C.A. Section 26.

XII.

The Defendants are guilty of forcible entry and forcible detainer.

WHEREFORE, the Plaintiffs, and each of them, pray for judgment against the Defendants, and each of them, as follows:

1. By a finding that the Defendants are guilty of forcible entry and forcible detainer.

2. By giving judgment to the Plaintiffs for restitution of the premises.

3. By declaring that the attempted relocation of claims by the Defendants were:

(a) Premature,

(b) Void by virtue of improper size,

(c) Not effective as a matter of law as a valid relocation,

(d) That the Plaintiffs' interest in Horne #110 through #117 is paramount to that of the Defendants and furthermore that the Plaintiffs have valid mining claims as to the subject property.

4. By giving Plaintiffs judgment for actual and punitive damages in sums that are found at the trial of this matter to be just and equitable.

5. By awarding the Plaintiffs their costs in this action incurred together with a reasonable attorney's fee.

6. By granting the Plaintiffs such other and further relief as may be deem, just and equitable.

DATED August 18th, 1981.

. . .

GREENWOOD, RYAN, HERBOLICH & ATONNA,
Ltd., 855 Cochise Ave., Douglas, AZ

By: _____
ARTHUR C. ATONNA for
JAMES B. GREENWOOD

STATE OF ARIZONA)
: ss.
County of Cochise)

ARTHUR C. ATONNA, being first duly sworn, upon his oath, hereby deposes and says that: I am one of the attorneys for the Plaintiffs; I hereby state that the matters alleged in the foregoing Complaint are true to the best of my knowledge, information and belief.

_____
ARTHUR C. ATONNA

SUBSCRIBED AND SWORN to before me this 18th day of August, 1981.

_____
NOTARY PUBLIC

My Commission Expires:
January 9, 1984

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(602) 432-5791

June 1, 1981

Mr. James B. Greenwood
Attorney at Law
P. O. Box 4340
Bisbee, Arizona 85603

Dear Sir:

RE: Cattany Suit

Thank you for your letter of May 27, 1981 which I found very interesting. I feel that Mr. Escapule is a very truthful man and will state the true facts, remain neutral and not take either side.

Mr. Cattany put no notices up that he was relocating these 8 claims. Our assessment work was completed before he placed his corner monuments.

Please find enclosed a copy of Chapter VI - Resumption of Work - #7.29 through 7.33. I have marked those sentences which I feel will help us a great deal.

Thank you for your assistance, and if there is anything we can do, please let me know.

Sincerely yours,

Harvey L. Hayes
Property Manager

HLH:ef
Encl.

E 308

GREENWOOD, RYAN, HERBOLICH & ATONNA, LTD.
ATTORNEYS AT LAW

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TELEPHONE (602) 364-7961

PLEASE REPLY TO: BISBEE

May 27, 1981

RECEIVED
MAY 28 1981
JAMES STEWART CO.

James Stewart Company
707 Mayer Central Building
3033 North Central Avenue
Phoenix, Arizona 85012

Attention: Mr. Harvey L. Hayes
Property Manager

Dear Mr. Hayes:

Thank you for your letter of May 20, 1981 and enclosures. We are proceeding with preparations, research, etc. for filing of the lawsuit. However, I believe you will be interested in the letter and other materials which I received from Mr. Cattany this date, copies of which are enclosed. I would appreciate your comments.

Very truly yours,

GREENWOOD, RYAN, HERBOLICH & ATONNA, Ltd.

By: James B. Greenwood
JAMES B. GREENWOOD

JBG:hf
Enclosures

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LAW OFFICE OF *Robert E. Cattany*

POST OFFICE BOX 611 · TOMBSTONE, ARIZONA 85638 · (602) 457-3731

May 26, 1981

Mr. James Greenwood
Attorney at Law
129 Naco Highway
Bisbee, Arizona 85603

Re: Horne - Rocky Mining Claims

James:

The enclosed material is from the American Law of Mining, a recognized authority in mining law. It is the chapter on resumption of assessment work and I have colored some pertinent parts. Also enclosed are Escapules' affidavits. Incidentally, I confronted the Escapules with the information Bill Grace gave you about Ernie Escapule owing him some favors so he agreed to do $800.00 worth of work for $200.00. This upset Ernie and he emphatically stated it was not true. He said the charge per hour for his backhoe at that time was $25.00 and he did 8 hours work. He charges $30.00 per hour now, and he says that some people are charging $32.50 depending on the equipment, but $25.00 per hour was the going rate when he did the work for Bill Grace.

A brief history of this situation starts with my entry onto the ground in question on Thur. Oct. 4, 1979, with a witness, in preparation of making mining locations, and I spent several hours walking over the entire area. Prior to this date, I had observed the area on several occasions for any activity and checked with the recorder's office to see if any affidavits of labor had been recorded. On Friday, Oct. 5, 1979, I spent most of the day on the ground in question with a 200 foot tape and a helper, finding the 1/4 section corners and measuring and marking for claim corners. I returned on Monday Oct. 8,1979 to finish my marking and measuring and found the backhoe work. I was told that John Escapule had done the work on Saturday or Sunday, so I went to see him. He wasn't in town, but his mother told me that Bill Grace had hired their backhoe to do $200.00 worth of work and that's what John had done. I asked if John was going to do any more work for Bill Grace, and she said she didn't think so.

I was on the ground in question every day from Oct. 8 thru Oct 12, 1979, finishing the measuring and marking corners (and looking for anyone doing other work). On Friday Oct. 12, 1979, I bought the lumber to make corner monuments and on Saturday Oct. 13, 1979, started setting monuments, finishing on Wed. Oct. 17, 1979. I put up my location notices on Oct. 18, 1979.

Very truly yours,

Bob

CHAPTER VI

RESUMPTION OF WORK

§ 7.29 In General. The federal statute, after setting forth the assessment work requirement, provides: [1]

> [a]nd upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns or legal representatives, have not resumed work upon the claim after failure and before such location. . . .

Until recently, it was well settled that a claim owner who failed to perform assessment work for one or more assessment years and who resumed assessment work before there was a relocation by another, was protected as though no failure had ever occurred, but the Department of the Interior, by regulation, apparently considers the statute to have been repealed by *Hickel v. Oil Shale Corp.*[2]

Whether there was a resumption of work after failure to

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§ 7.29 [1] 17 Stat. 92, R.S. § 2324, 30 U.S.C. § 28 (1970).

[2] 400 U.S. 48 (1970). *See* 37 Fed. Reg. 17536 (Sept. 1, 1972), and *compare* §§ 7.26-7.28, *infra*, with Belk v. Meagher, 104 U.S. 279 (1881); Lakin v. Sierra Buttes Gold Mining Co., 25 F. 337 (C.C. Cal. 1885); Peachy v. Gaddis, 14 Ariz. 214, 127 P. 739 (1912); Madison v. Octave Oil Co., 154 Cal. 765, 99 P. 176 (1908); Bunker Chance Mining Co. v. Bex, 408 P.2d 170 (Idaho 1965); Lacey v. Woodward, 5 N.M. 553, 25 P. 755 (1891); Muck v. Ideal Cement Co., 223 Ore. 457, 354 P.2d 821 (1960); Banfield v. Crispen, 111 Ore. 388, 226 P. 235 (1924).

perform annual assessment work is a question of fact.[3] Where a claim owner relies upon a resumption of work to defeat a relocation, the burden is upon such claim owner to show affirmatively that work was resumed before the relocation.[4]

§ 7.30 Time of Resumption. Assessment work may be resumed at any time before a valid relocation is made.[1] A defective relocation does not terminate the right of the original locator to resume work if he resumes work after the period allowed for completing location and before the deficiencies are corrected.[2] A relocation made before the original locator is delinquent in the performance of assessment work is premature, and even though the original locator fails to perform the assessment work for that year, if he resumes work after the end of the particular assessment year and before the relocator files an additional and amended location certificate, his claim is preserved.[3]

---

[3] Peachy v. Frisco Gold Mines Co., 204 F. 659 (D. Ariz. 1913); Crane v. French, 39 Cal. App. 2d 642, 104 P.2d 53 (1940).

[4] Bunker Chance Mining Co. v. Bex, *supra* n.2; Honaker v. Martin, 11 Mont. 91, 27 P. 397 (1891); McKnight v. El Paso Brick Co., 16 N.M. 721, 120 P. 694 (1911); *rev'd on other grounds*, El Paso Brick Co. v. McKnight, 233 U.S. 250 (1914). *Contra*, Willitt v. Baker, 133 F. 937 (C.C. Ark. 1904); Florence-Rae Copper Co. v. Kimbel, 85 Wash. 162, 147 P. 881 (1915).

§ 7.30 [1] *But see* § 7.29 *supra*, which casts doubt upon cases such as Justice Mining Co. v. Barclay, 82 F. 554 (C.C. Nev. 1897); Jordan v. Duke, 6 Ariz. 55, 53 P. 197 (1898); Crane v. French, 39 Cal. App. 2d 642, 104 P.2d 53 (1940); Clarke v. Mallory, 22 Cal. App. 2d 55, 70 P.2d 664 (1937); Little Dorrit Gold Mining Co. v. Arapahoe Gold Mining Co., 30 Colo. 431, 71 P. 389 (1902); Bunker Chance Mining Co. v. Bex, 408 P.2d 170 (Idaho 1965); Inman v. Ollson, 213 Ore. 56, 321 P.2d 1043 (1958).

[2] Field v. Tanner, 32 Colo. 278, 75 P. 916 (1904); Thornton v. Kaufman, 40 Mont. 252, 106 P. 361 (1910); McKay v. McDougall, 25 Mont. 258, 64 P. 669 (1901); Klopenstine v. Hayes, 20 Utah 45, 57 P. 712 (1899). *See* § 7.33 *infra* for a discussion of right to resume work after a relocation has been commenced, but before the relocation has been completed.

[3] Clarke v. Mallory, *supra* n.1; Bagg v. New Jersey Loan Co., 88 Ariz. 182, 354 P.2d 40 (1960). The latter case is criticized by Mr. Martz in 36 N.Y.U.L. Rev. 357, 1960 Annual Survey of American Law 399-401 (1961).

In *Fee v. Durham* [4] and *Emerson v. McWhirter*,[5] on almost identical facts, it was held that when the assessment year ended on Saturday and the original locator was working on the last day of the assessment year, but rested on Sunday and resumed work on Monday, the continuity of work was not interrupted, and that a relocation made on Sunday was of no avail. These cases seem to establish the principle that there is a timely resumption if the claim owner starts work at the regular hour on the first regular work day of the first assessment year following the year for which work was not performed.[6]

§ 7.31 Amount of Work Required After Resumption. So long as the original locator resumes work before there is a relocation, it is immaterial that assessment work was not performed for one or more previous years, and the claim owner is only required to perform $100 worth of assessment work for the current year.[1]

An interesting question arises if the claim owner commences work before the end of assessment year A, performing $50 worth of work, and then continues the work into assessment year B, performing another $50 worth of work. It might be argued that the entire $100 worth of stock would apply to, and satisfy, the work required for assessment year A, giving the claim owner all of assessment year B to perform an addi-

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[4] 121 F. 468 (8th Cir. 1903).

[5] 133 Cal. 510, 65 P. 1036 (1901), *same case appealed on other grounds*, Emerson v. Yosemite Gold Mining & Milling Co., 149 Cal. 150, 85 P. 122 (1906), *aff'd*, 208 U.S. 25.

[6] *See* Pharis v. Muldoon (1888) 75 Cal. 284, 17 P. 70, where the Court suggested, but did not decide, that a relocation initiated at 1:00 A.M. on the first day of the assessment year would be invalid if work were resumed at the regular hour. See also Willitt v. Baker (CC WD Ark 1904) 133 F. 937. This problem is largely academic since the assessment year now ends at 12:00 o'clock noon.

§ 7.31 [1] Temescal Oil Mining & Development Co. v. Salcido, 137 Cal. 211, 69 P. 1010 (1902); Crown Point Gold Mining Co. v. Crismon, 39 Ore. 364, 65 P. 87 (1901).

tional $100 worth of assessment work.[2] However, if that rule were followed, logically, the $50 worth of assessment work performed during the first portion of assessment year B would not be available to satisfy the work required for assessment year B. This rule would therefore seem to be in conflict with the rule that once work is resumed, the work for former years need not be performed.[3] Accordingly, the better rule would seem to be to treat each assessment year as a separate entity. It would then follow that even if the claim owner performed $50 worth of work at the end of assessment year A, he would be required to perform $100 worth of work with reasonable diligence after the commencement of assessment year B, and the entire amount of work performed during assessment year B would be applicable to the assessment work requirement for assessment year B.[4]

§ 7.32 Diligence in Completing Work. In *Belcher Consolidated Gold Mining Co. v. Deferrari*, an early California case, it was held that if assessment work was resumed during the assessment year, no relocation could be made during such year, even if the assessment work was discontinued before completion.[1] This case was severely criticized.[2] The rule now seems to be well established that work, once resumed, must be continued with diligence until the requisite amount for the current year is completed.[3]

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[2] The language of the court in Jordan v. Duke, 6 Ariz. 55, 53 P. 197 (1898), indicates such a rule.

[3] *See* n.1 *supra*.

[4] This rule seems to be applied in Anderson v. Robinson (1912) 63 Ore. 228, 126 P. 988, *rehearing denied*, 127 P. 546.

§ 7.32 [1] 62 Cal. 160 (1882).

[2] *Lindley on Mines* § 652 (3rd ed 1914); Morrison, *Mining Rights* 125 (16th ed 1936).

[3] McCormick v. Baldwin (1894) 104 Cal 227, 37 P. 903 (a few hours' work performed after commencement of assessment year held not sufficient); Hirschler v. McKendricks, 16 Mont. 211, 40 P. 290 (1895) (15-day interruption of work without cause held not due diligence); Honaker v. Martin (1891) 11 Mont. 91, 27 P. 397; Bishop v. Baisley (1895) 28 Ore. 119, 41 P. 936 (a few hours spent in taking samples held not a resumption of work).

If work is resumed, while such work continues, the claim is not subject to relocation, and a relocation made while work is being performed is invalid even if the assessment work is thereafter abandoned before the requisite amount is completed.[4]

§ 7.33 Resumption After Relocation Commenced. There has been a clear division of authority concerning the rights of a claim owner who resumes work after another party has commenced a relocation, but before such relocation has been completed. A number of cases have held that work may be resumed at any time before the relocation has been completed.[1] The text writers favor the rule that once a relocation is commenced, the relocator is entitled to the period allowed by statute for completing the relocation, and that during such period the original locator cannot resume work and defeat the relocation.[2] They point out if the other rule were followed, since several days are normally required to complete a relocation, the delinquent claim owner could sit idly by until someone commenced a relocation, and then resume work and defeat the relocation. This argument seems persuasive, and some courts have followed the rule advocated by the text writers.[3] The rule has been changed in Montana by statute which now provides that the relocator's rights are protected from the time he posts a notice on the claim, so long as he

---

[4] Jupiter Mining Co. v. Brodie Consolidated Mining Co. (9th Cir 1881) 11 F. 666; Jordan v. Duke, 6 Ariz. 55, 53 P. 197 (1898). *See also* Lacey v. Woodward (1891) 5 N.M. 583, 25 P. 785.

§ 7.33 [1] Featherston v. Howse (WD Ark 1957) 151 F Supp 353; Clarke v. Mallory (1937) 22 Cal App2d 55, 70 P2d 664; Pharis v. Muldoon (1855) 75 Cal. 284, 17 P. 70; Thornton v. Kaufman (1910) 40 Mont. 282, 106 P. 361; McKay v. McDougall (1901) 25 Mont. 258, 64 P. 669; Gonu v. Russell (1879) 3 Mont. 358.

[2] *Lindley on Mines* § 408 (3rd ed 1914); Morrison, *Mining Rights* 125 (16th ed 1936).

[3] Little Gunnell Co. v. Kimber (CC D Colo 1878) 15 F. Cas. 629 (No. 8, 402); Frazier v. Consolidated Tungsten Mines (1956) 80 Ariz 261, 296 P2d 447.

is duly performing the acts required by law to perfect his location.[4]

A very interesting situation is presented when (1) the senior locator fails to perform assessment work, (2) there is a relocation and the second locator fails to perform assessment work, (3) the senior locator then resumes work, and (4) a third party relocates. In a contest between the senior locator and the last locator, it has been held that the last locator cannot take advantage of the intervening location to cut off the rights of the senior locator, and that the senior locator revives his claim by resuming work.[5] Similarly, it has been held in a contest between the first locator and second locator, where both fail to perform assessment work and the first locator resumes his work first, that he prevails over the junior locator.[6] While this rule which permits the revival of an old claim after abandonment of a later relocation has been criticized as being contrary to the wording of the federal statute,[7] it accomplishes an equitable result, and it seems unlikely that it will be overruled.

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[4] Mont RC (1947) § 50-707.

[5] Justice Mining Co. v. Barclay (CC D Nev 1897) 82 F. 554; Richen v. Davis (1915) 76 Ore. 311, 148 P. 1130.

[6] Klopenstine v. Hays (1899) 20 Utah 45, 57 P. 712.

[7] *Lindley, supra* n.2 at § 651.

The next page is 171

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GREENWOOD, RYAN, HERBOLICH & ATONNA, LTD.
ATTORNEYS AT LAW

JAMES B. GREENWOOD
MARTIN F. RYAN
MICHAEL J. HERBOLICH
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TELEPHONE (602) 432-5791

855 COCHISE AVENUE
DOUGLAS, ARIZONA 85607
TELEPHONE (602) 364-7961

PLEASE REPLY TO: BISBEE

May 27, 1981

James Stewart Company
707 Mayer Central Building
3033 North Central Avenue
Phoenix, Arizona 85012

Attention: Mr. Harvey L. Hayes
Property Manager

Dear Mr. Hayes:

Thank you for your letter of May 20, 1981 and enclosures. We are proceeding with preparations, research, etc. for filing of the lawsuit. However, I believe you will be interested in the letter and other materials which I received from Mr. Cattany this date, copies of which are enclosed. I would appreciate your comments.

Very truly yours,

GREENWOOD, RYAN, HERBOLICH & ATONNA, Ltd.

By: James B. Greenwood
JAMES B. GREENWOOD

JBG:hf
Enclosures

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AFFIDAVIT

STATE OF ARIZONA)
COUNTY OF COCHISE) ss.
)

Ernest H. Escapule, being first duly sworn, deposes and says:

1. That on or about October 6, 1979, he was hired by W.W. Grace to do some backhoe work on 8 unpatented mining claims in Sec. 20, T20S, R22E, Tombstone Mining District, Cochise County, Arizona.

2. That the work was done on or about October 6, 1979, using his backhoe operated by his son John Escapule.

3. That he charged $200.00 for the work, which was the usual charge for the amount of work done.

4. That he was paid $200.00 for the work, and did no other or further work on the said 8 mining claims until the first part of March, 1980.

5. That on or about March //, 1980, W.W. Grace requested that he do some additional backhoe work on the said 8 mining claims, and on the nearby Chance patented claim.

6. That on March //, 1980, the additional work was done using his backhoe operated by his son John Escapule.

7. That he charged $49.00 for the total amount of work, which was the usual charge for the amount of work done, approximately half of such work being done on the said 8 mining claims. The $49.00 was never paid to him.

8. The foregoing describes all of the work done by him or his son John Escapule on the said 8 mining claims from October, 1979 to date.

Ernest H. Escapule
Ernest H. Escapule

SUBSCRIBED AND SWORN to before me this 1st day of May, 1981, by Ernest H. Escapule.

Laura Lee Brandon
Notary Public

My Commission Expires:

[illegible] 16, 1984

318

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

John Escapule, being first duly sworn, deposes and says:

1. That on or about October 6, 1979, he operated his father's backhoe doing some trenching work on a portion of 8 unpatented mining claims in Sec. 20, T20S, R22E, Tombstone Mining District, Cochise County, Arizona, as requested by W.W. Grace.

2. That the usual charge for the amount of work done was $200.00.

3. That he did no further or other work on said 8 mining claims until the first part of March, 1980.

4. That on or about March 11, 1980, he operated his father's backhoe on a portion of said 8 mining claims and on the nearby Chance patented claim, doing a total of $49.00 worth of work at the usual charge, approximately half of which was done on the said 8 mining claims, or a portion thereof.

5. The foregoing describes all the work done by him on the said 8 mining claims from October, 1979 to date.

John Escapule

SUBSCRIBED AND SWORN to before me this 1st day of May, 1981, by John Escapule.

Notary Public

My Commission Expires:

My Commission Expires Oct. 10, 1984

LAW OFFICE OF *Robert E. Cattany*

POST OFFICE BOX 611 · TOMBSTONE, ARIZONA 85638 · (602) 457-3731

May 26, 1981

Mr. James Greenwood
Attorney at Law
129 Naco Highway
Bisbee, Arizona 85603

Re: Horne - Rocky Mining Claims

James:

The enclosed material is from the American Law of Mining, a recognized authority in mining law. It is the chapter on resumption of assessment work and I have colored some pertinent parts. Also enclosed are Escapules' affidavits. Incidentally, I confronted the Escapules with the information Bill Grace gave you about Ernie Escapule owing him some favors so he agreed to do $800.00 worth of work for $200.00. This upset Ernie and he emphatically stated it was not true. He said the charge per hour for his backhoe at that time was $25.00 and he did 8 hours work. He charges $30.00 per hour now, and he says that some people are charging $32.50 depending on the equipment, but $25.00 per hour was the going rate when he did the work for Bill Grace.

A brief history of this situation starts with my entry onto the ground in question on Thur. Oct. 4, 1979, with a witness, in preparation of making mining locations, and I spent several hours walking over the entire area. Prior to this date, I had observed the area on several occasions for any activity and checked with the recorder's office to see if any affidavits of labor had been recorded. On Friday, Oct. 5, 1979, I spent most of the day on the ground in question with a 200 foot tape and a helper, finding the 1/4 section corners and measuring and marking for claim corners. I returned on Monday Oct. 8,1979 to finish my marking and measuring and found the backhoe work. I was told that John Escapule had done the work on Saturday or Sunday, so I went to see him. He wasn't in town, but his mother told me that Bill Grace had hired their backhoe to do $200.00 worth of work and that's what John had done. I asked if John was going to do any more work for Bill Grace, and she said she didn't think so.

I was on the ground in question every day from Oct. 8 thru Oct 12, 1979, finishing the measuring and marking corners (and looking for anyone doing other work). On Friday Oct. 12, 1979, I bought the lumber to make corner monuments and on Saturday Oct. 13, 1979, started setting monuments, finishing on Wed. Oct. 17, 1979. I put up my location notices on Oct. 18, 1979.

Very truly yours,

Bob

320.

CHAPTER VI

RESUMPTION OF WORK

§ 7.29 In General. The federal statute, after setting forth the assessment work requirement, provides: [1]

> [a]nd upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns or legal representatives, have not resumed work upon the claim after failure and before such location. . . .

Until recently, it was well settled that a claim owner who failed to perform assessment work for one or more assessment years and who resumed assessment work before there was a relocation by another, was protected as though no failure had ever occurred, but the Department of the Interior, by regulation, apparently considers the statute to have been repealed by *Hickel v. Oil Shale Corp.*[2]

Whether there was a resumption of work after failure to

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§ 7.29 [1] 17 Stat. 92, R.S. § 2324, 30 U.S.C. § 28 (1970).

[2] 400 U.S. 48 (1970). *See* 37 Fed. Reg. 17830 (Sept. 1, 1972), and *compare* §§ 7.26-7.28, *infra*, with Belk v. Meagher, 104 U.S. 279 (1881); Lakin v. Sierra Buttes Gold Mining Co., 25 F. 337 (C.C. Cal. 1885); Peachy v. Gaddis, 14 Ariz. 214, 127 P. 739 (1912); Madison v. Octave Oil Co., 154 Cal. 765, 99 P. 176 (1908); Bunker Chance Mining Co. v. Bex, 408 P.2d 170 (Idaho 1965); Lacey v. Woodward, 5 N.M. 583, 25 P. 785 (1891); Muck v. Ideal Cement Co., 223 Ore. 457, 354 P.2d 821 (1960); Banfield v. Crispen, 111 Ore. 388, 226 P. 235 (1924).

perform annual assessment work is a question of fact.[3] Where a claim owner relies upon a resumption of work to defeat a relocation, the burden is upon such claim owner to show affirmatively that work was resumed before the relocation.[4]

§ 7.30 Time of Resumption. Assessment work may be resumed at any time before a valid relocation is made.[1] A defective relocation does not terminate the right of the original locator to resume work if he resumes work after the period allowed for completing location and before the deficiencies are corrected.[2] A relocation made before the original locator is delinquent in the performance of assessment work is premature, and even though the original locator fails to perform the assessment work for that year, if he resumes work after the end of the particular assessment year and before the relocator files an additional and amended location certificate, his claim is preserved.[3]

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[3] Peachy v. Frisco Gold Mines Co., 204 F. 659 (D. Ariz. 1913); Crane v. French, 39 Cal. App. 2d 642, 104 P.2d 53 (1940).

[4] Bunker Chance Mining Co. v. Bex, *supra* n.2; Honaker v. Martin, 11 Mont. 91, 27 P. 397 (1891); McKnight v. El Paso Brick Co., 16 N.M. 721, 120 P. 694 (1911); *rev'd on other grounds*, El Paso Brick Co. v. McKnight, 233 U.S. 250 (1914). *Contra*, Willitt v. Baker, 133 F. 937 (C.C. Ark. 1904); Florence-Rae Copper Co. v. Kimbel, 85 Wash. 162, 147 P. 881 (1915).

§ 7.30 [1] *But see* § 7.29 *supra*, which casts doubt upon cases such as Justice Mining Co. v. Barclay, 82 F. 554 (C.C. Nev. 1897); Jordan v. Duke, 6 Ariz. 55, 53 P. 197 (1898); Crane v. French, 39 Cal. App. 2d 642, 104 P.2d 53 (1940); Clarke v. Mallory, 22 Cal. App. 2d 55, 70 P.2d 664 (1937); Little Dorrit Gold Mining Co. v. Arapahoe Gold Mining Co., 30 Colo. 431, 71 P. 359 (1902); Bunker Chance Mining Co. v. Bex, 408 P.2d 170 (Idaho 1965); Inman v. Ollson, 213 Ore. 56, 321 P.2d 1043 (1958).

[2] Field v. Tanner, 32 Colo. 278, 75 P. 916 (1904); Thornton v. Kaufman, 40 Mont. 282, 106 P. 361 (1910); McKay v. McDougall, 25 Mont. 258, 64 P. 669 (1901); Klopenstine v. Hayes, 20 Utah 45, 57 P. 712 (1899). *See* § 7.33 *infra* for a discussion of right to resume work after a relocation has been commenced, but before the relocation has been completed.

[3] Clarke v. Mallory, *supra* n.1; Bagg v. New Jersey Loan Co., 88 Ariz. 182, 354 P.2d 40 (1960). The latter case is criticized by Mr. Martz in 36 N.Y.U.L. Rev. 357, 1960 Annual Survey of American Law 399–401 (1961).

In *Fee v. Durham* [4] and *Emerson v. McWhirter*,[5] on almost identical facts, it was held that when the assessment year ended on Saturday and the original locator was working on the last day of the assessment year, but rested on Sunday and resumed work on Monday, the continuity of work was not interrupted, and that a relocation made on Sunday was of no avail. These cases seem to establish the principle that there is a timely resumption if the claim owner starts work at the regular hour on the first regular work day of the first assessment year following the year for which work was not performed.[6]

§ 7.31 **Amount of Work Required After Resumption.** So long as the original locator resumes work before there is a relocation, it is immaterial that assessment work was not performed for one or more previous years, and the claim owner is only required to perform $100 worth of assessment work for the current year.[1]

An interesting question arises if the claim owner commences work before the end of assessment year A, performing $50 worth of work, and then continues the work into assessment year B, performing another $50 worth of work. It might be argued that the entire $100 worth of stock would apply to, and satisfy, the work required for assessment year A, giving the claim owner all of assessment year B to perform an addi-

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[4] 121 F. 468 (8th Cir. 1903).

[5] 133 Cal. 510, 65 P. 1036 (1901), *same case appealed on other grounds*, Emerson v. Yosemite Gold Mining & Milling Co., 149 Cal. 150, 85 P. 122 (1906), *aff'd*, 208 U.S. 25.

[6] *See* Pharis v. Muldoon (1888) 75 Cal. 284, 17 P. 70, where the Court suggested, but did not decide, that a relocation initiated at 1:00 A.M. on the first day of the assessment year would be invalid if work were resumed at the regular hour. See also Willitt v. Baker (CC WD Ark 1904) 133 F. 937. This problem is largely academic since the assessment year now ends at 12:00 o'clock noon.

§ 7.31 [1] Temescal Oil Mining & Development Co. v. Salcido, 137 Cal. 211, 69 P. 1010 (1902); Crown Point Gold Mining Co. v. Crismon, 39 Ore. 364, 65 P. 87 (1901).

tional $100 worth of assessment work.[2] However, if that rule were followed, logically, the $50 worth of assessment work performed during the first portion of assessment year B would not be available to satisfy the work required for assessment year B. This rule would therefore seem to be in conflict with the rule that once work is resumed, the work for former years need not be performed.[3] Accordingly, the better rule would seem to be to treat each assessment year as a separate entity. It would then follow that even if the claim owner performed $50 worth of work at the end of assessment year A, he would be required to perform $100 worth of work with reasonable diligence after the commencement of assessment year B, and the entire amount of work performed during assessment year B would be applicable to the assessment work requirement for assessment year B.[4]

§ 7.32 Diligence in Completing Work. In *Belcher Consolidated Gold Mining Co. v. Deferrari*, an early California case, it was held that if assessment work was resumed during the assessment year, no relocation could be made during such year, even if the assessment work was discontinued before completion.[1] This case was severely criticized.[2] The rule now seems to be well established that work, once resumed, must be continued with diligence until the requisite amount for the current year is completed.[3]

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[2] The language of the court in Jordan v. Duke, 6 Ariz. 55, 53 P. 197 (1898), indicates such a rule.

[3] *See* n.1 *supra*.

[4] This rule seems to be applied in Anderson v. Robinson (1912) 63 Ore. 228, 126 P. 988, *rehearing denied*, 127 P. 546.

§ 7.32 [1] 62 Cal. 160 (1882).

[2] *Lindley on Mines* § 652 (3rd ed 1914); Morrison, *Mining Rights* 125 (16th ed 1936).

[3] McCormick v. Baldwin (1894) 104 Cal. 227, 37 P. 903 (a few hours' work performed after commencement of assessment year held not sufficient); Hirschler v. McKendricks, 16 Mont. 211, 40 P. 290 (1895) (15-day interruption of work without cause held not due diligence); Honaker v. Martin (1891) 11 Mont. 91, 27 P. 397; Bishop v. Baisley (1895) 28 Ore. 119, 41 P. 936 (a few hours spent in taking samples held not a resumption of work).

If work is resumed, while such work continues, the claim is not subject to relocation, and a relocation made while work is being performed is invalid even if the assessment work is thereafter abandoned before the requisite amount is completed.[4]

§ 7.33 Resumption After Relocation Commenced. There has been a clear division of authority concerning the rights of a claim owner who resumes work after another party has commenced a relocation, but before such relocation has been completed. A number of cases have held that work may be resumed at any time before the relocation has been completed.[1] The text writers favor the rule that once a relocation is commenced, the relocator is entitled to the period allowed by statute for completing the relocation, and that during such period the original locator cannot resume work and defeat the relocation.[2] They point out if the other rule were followed, since several days are normally required to complete a relocation, the delinquent claim owner could sit idly by until someone commenced a relocation, and then resume work and defeat the relocation. This argument seems persuasive, and some courts have followed the rule advocated by the text writers.[3] The rule has been changed in Montana by statute which now provides that the relocator's rights are protected from the time he posts a notice on the claim, so long as he

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[4] Jupiter Mining Co. v. Brodie Consolidated Mining Co. (9th Cir 1881) 11 F. 666; Jordan v. Duke, 6 Ariz. 55, 53 P. 197 (1898). *See also* Lacey v. Woodward (1891) 5 N.M. 583, 25 P. 785.

§ 7.33 [1] Featherston v. Howse (WD Ark 1957) 151 F Supp 353; Clarke v. Mallory (1937) 22 Cal App2d 55, 70 P2d 664; Pharis v. Muldoon (1888) 75 Cal. 284, 17 P. 70; Thornton v. Kaufman (1910) 40 Mont. 282, 106 P. 361; McKay v. McDougall (1901) 25 Mont. 258, 64 P. 669; Gonu v. Russell (1879) 3 Mont. 358.

[2] *Lindley on Mines* § 408 (3rd ed 1914); Morrison, *Mining Rights* 125 (16th ed 1936).

[3] Little Gunnell Co. v. Kimber (CC D Colo 1878) 15 F. Cas. 629 (No. 8, 402); Frazier v. Consolidated Tungsten Mines (1956) 80 Ariz 261, 296 P2d 447.

is duly performing the acts required by law to perfect his location.[4]

A very interesting situation is presented when (1) the senior locator fails to perform assessment work, (2) there is a relocation and the second locator fails to perform assessment work, (3) the senior locator then resumes work, and (4) a third party relocates. In a contest between the senior locator and the last locator, it has been held that the last locator cannot take advantage of the intervening location to cut off the rights of the senior locator, and that the senior locator revives his claim by resuming work.[5] Similarly, it has been held in a contest between the first locator and second locator, where both fail to perform assessment work and the first locator resumes his work first, that he prevails over the junior locator.[6] While this rule which permits the revival of an old claim after abandonment of a later relocation has been criticized as being contrary to the wording of the federal statute,[7] it accomplishes an equitable result, and it seems unlikely that it will be overruled.

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[4] Mont RC (1947) § 50-707.

[5] Justice Mining Co. v. Barclay (CC D Nev 1897) 82 F. 554; Richen v. Davis (1915) 76 Ore. 311, 148 P. 1130.

[6] Klopenstine v. Hays (1899) 20 Utah 45, 57 P. 712.

[7] *Lindley, supra* n.2 at § 651.

The next page is 171

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May 20, 1981

Mr. James B. Greenwood
Attorney at Law
129 Naco Highway
P. O. Box 4340
Bisbee, Arizona 85603

Dear Mr. Greenwood:

You will find enclosed copies of Mining Locations for Horne #110 - #117, together with copies of correspondence in our files. The lease agreement between M. Seth Horne, Lessor, and W. W. Grace, Lessee, was entered into on the 1st day of October, 1979.

Mr. Horne wishes for you to sue Mr. Cattany for everything -- loss of sale, illegal filing, all court and attorney fees, costs for witnesses, clouding of title, etc.

I had phone conversations this morning with Ernie Escapule and Bill Grace, and they will testify in our behalf.

If you need any additional information, please contact me and I will do my best to furnish it.

Sincerely yours,

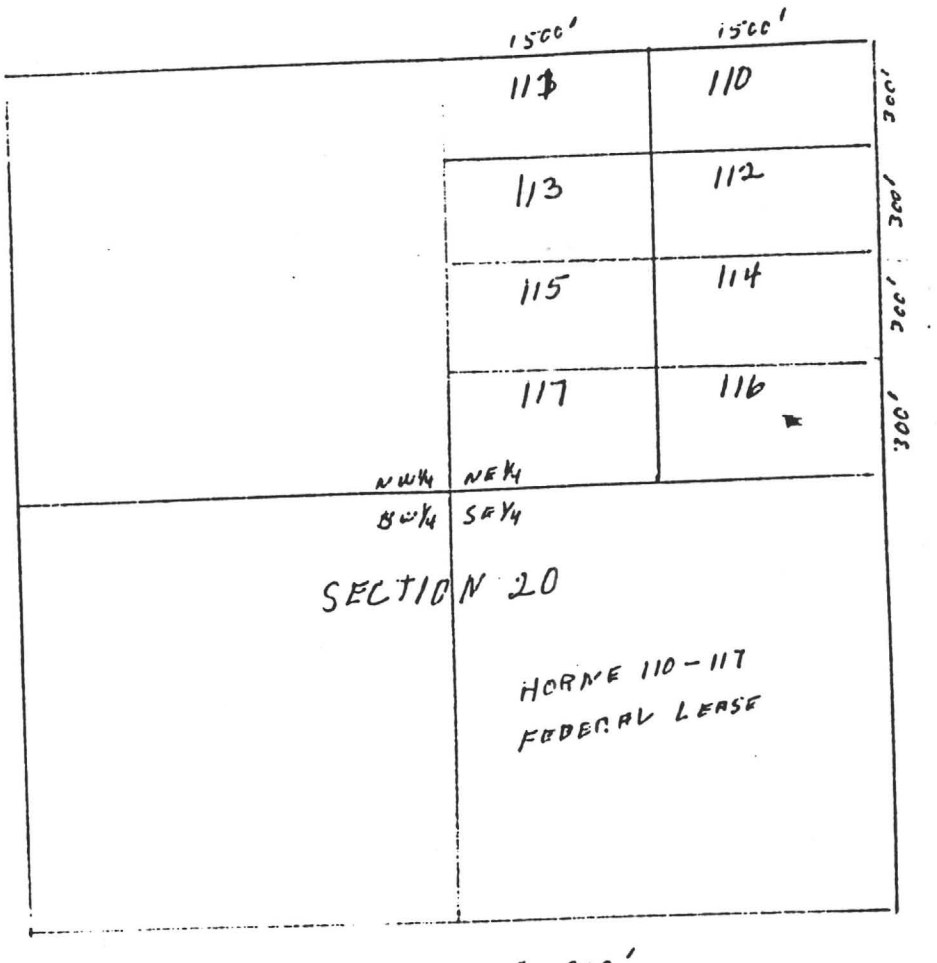
Harvey L. Hayes
Property Manager

HLH:ef
Encls.

PLAT

SECTION 20 RANGE 22 E TOWNSHIP 20 S

COCHISE COUNTY, ARIZONA



SCALE 1" = 880'

328

AFFIDAVIT OF LABOR PERFORMED AND IMPROVEMENTS MADE

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

W. W. Grace, being first duly sworn, deposes and says:

That he is a citizen of the United States and more than eighteen years of age, and resides in Scottsdale, Maricopa, Arizona, and is personally acquainted with the unpatented mining claims situated in the Tombstone Mining District, Cochise County, Arizona, the location notices of which are recorded in the office of the Cochise County Recorder and known as HORNE #110 through #117.

That between the 6th day of October, 1979, and the 10th day of March, 1980, not less than $800.00 worth of work and improvements were done and performed upon the said claims, and that the claims constitute a contiguous group under a common ownership and that the work was done upon or for the benefit of all of the said claims.

This work was performed by John Escapule and W. W. Grace. The work was done under the supervision of W. W. Grace according to an agreement entered into by W. W. Grace and M. Seth Horne dated October 1, 1979.

The work was performed for the purpose of complying with the laws of the United States and of the State of Arizona relative to performance of annual work for the purpose of holding title to said unpatented mining claims for the valuable mineral contained therein.

DATED this 7th day of April, 1980.

W. W. Grace

SUBSCRIBED and sworn to before me by W. W. Grace this 7th day of April, 1980.

Notary Public

My Commission Expires:

October 10, 1982

329

Form 3830–1
(October 1977)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

HORNE 110-117

MINING CLAIM ANNUAL RECORDATION REQUIREMENTS
(43 CFR 3833.2)

Serial Number AMC 84789 thru 84912

Name or number of Claim _____

Received (*date*) April 23, 1980

This acknowledges receipt of:

☒ Evidence of annual assessment work 1979, 1980

☐ Notice of intent to hold claim

Appropriate notations have been made on the records.

2400 Valley Bank Center
Phoenix, Arizona 85073

United States
Department of the Interior
Bureau of Land Management

PHOENIX, AZ 850
PM
2 AUG 74
1980

POSTAGE AND FEES PAID
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AMERICAN CANCER SOCIETY
U.S. MAIL

James Stewart Company
707 Mayer Central Building
3033 North Central AVE.
Phoenix Arizona
85012

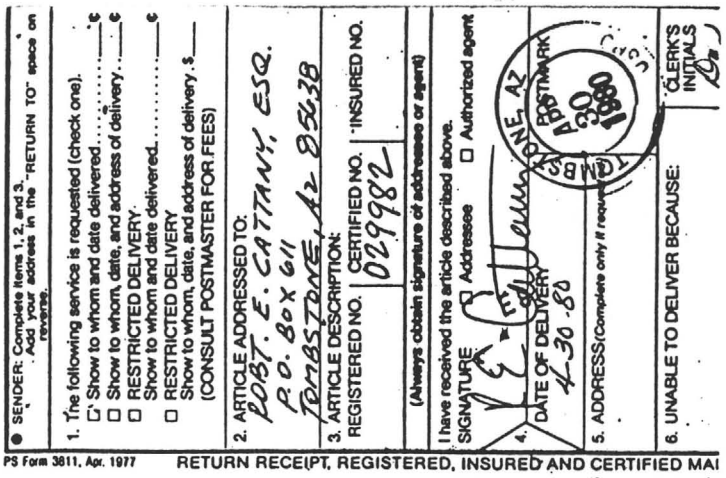
1980 AUG 21 AM 8 45

RECEIVED

AUG 25 1980

JAMES STEWART COMPANY
PHOENIX, ARIZONA

330



April 28, 1980

Robert E. Cattany, Esq.
P. O. Box 611
Tombstone, Arizona 85638

Dear Mr. Cattany:

It has come to our attention recently that you or your personnel are still engaged in mining activity on some of our federal mining claims. These claims are known as Horne 110 through 117 and are recorder in the County Recorder's Office in Bisbee. We request that you stop all mining related work or we will take legal recourse against you. This mining activity should be stopped immediately.

If you have a need to contact me, I can be reached in Phoenix at 264-2181.

Sincerely,

Roger P. Smith
Property Manager

RPS:jts

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

No. 029982

SENT TO: ROBERT E. CATTANY, ESQ.
STREET AND NO.: P.O. BOX 611
P.O., STATE AND ZIP CODE: TOMBSTONE, ARIZONA 85638
POSTMARK OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ... 15¢
With delivery to addressee only ... 65¢
2. Shows to whom, date and where delivered ... 35¢
With delivery to addressee only ... 85¢
DELIVER TO ADDRESSEE ONLY ... 50¢
SPECIAL DELIVERY (extra fee required) ...

PS Form 3800 Apr. 1971 — NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL — (See other side)

331

457-3731

January 21, 1980

Robert E. Cattany, Esq.
P. O. Box 611
Tombstone, Arizona 85638

Dear Mr. Cattany:

It has recently come to my attention that you or your personnel are engaged in mining activity on some of our federal mining claims. We would appreciate it if you would stop this immediately and do what is needed to clear the title. I have enclosed copies of our Lode Claims which substantiate our holdings. I have also included a receipt from the BLM for these mining claim notices which were filed with them on October 22, 1979. I would appreciate it if you would write and give me notice when you are off the property.

If you have any questions, please call me at 602-264-2181.

Sincerely,

Roger P. Smith
Property Manager

RPS:vs
Enclosures

Greenwood

332

50 [illegible] ft deep by 25 ft 10 ft [illegible] [illegible]

15

10 ft length 2½ ft deep
25 ft " 2 ft deep
25 ft " 2½ ft deep
25 ft 2 deep
50 ft 2
50 ft 4 ft
60 4 ft
Cross 25 1½ ft deep
25 3 ft deep
50 2½
50 3
40 2
1150 ft

3 ft wide

our assessment work

450
50
500

28 5 ft [illegible] our assessment
22 2 ft
50

100 ft [illegible]
500 ft length of Trenching 3 ft wide Our assessment 3 ft dep

Cattany his assessment work
20 ft 4 ft deep 3 ft wide

333

RECEIVED
OCT 9 1981
JAMES STEWART CO.

Gentlemen:

This Copy is for Your Information Only. No Reply Needed. Thank You. Arthur C. Atonna

SUPERIOR COURT OF ARIZONA

COUNTY OF COCHISE

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W. W. GRACE,

Plaintiffs,

-vs-

ROBERT E. CATTANY and JANE DOE CATTANY, husband and wife,

Defendants.

No. 40466

MEMORANDUM IN SUPPORT OF DEFENDANTS' POSITION

This memorandum is submitted pursuant to order of the court, as amended to extend the time for filing from October 22, 1981 to October 25, 1981.

Defendants' position is that the property in question was subject to forfeiture by relocation on September 1, 1979, for plaintiffs' failure to do the required work for the assessment year ending August 31, 1979. Although plaintiffs resumed the assessment work on or about October 6, 1979, they failed to complete the performance thereof with due diligence on a continuous basis and without unreasonable interruption, as the law requires. As a result, the property in question, eight mining claims, were subject to forfeiture by relocation on October 18, 1979, and were so located by defendants after waiting for 12 days for plaintiffs to complete their assessment work.

Defendant Robert E. Cattany testified, without contradiction, that there was no work done on the claims and no affidavit of assessment work recorded for plaintiffs' eight claims for the assessment year ending August 31, 1979. Likewise, there was undisputed testimony that plaintiffs commenced or resumed the assessment work on the eight claims on October 6, 1979, paid $200.00 for the work done on October 6, 1979, did no further work on the claims for several months, and did not return to visit the claims for about two weeks after October 6, 1979, and recorded affidavits of assessment work on March 14, 1980 and April 8, 1980.

The party asserting a forfeiture has the burden of proving by clear and convincing proof, that the assessment work was not performed, McDermott vs. O'Brien, 2 Ariz App 429, 409 P2d 588 (1966). The filing of an affidavit of assessment work is prima facie evidence that the assessment work has been done, ARS 27-208 B., but may be rebutted by introducing evidence that the assessment work was not in fact performed, California Dolomite Co. vs. Standridge, 275 P2d 823 (Cal. 1954), Dickens-West Min. Co. vs. Crescent Min. & Mill. Co., 141 P 566 (Ida. 1914). The rebutting evidence in the instant case includes that which was undisputed, i.e., payment of $200.00 for the work done on the plaintiffs' eight claims on October 6, 1979, no further work being done on the claims for several months (March, 1980) and plaintiffs not returning to visit the claims for about two weeks after October 6, 1979. Additionally, plaintiffs introduced in evidence, two affidavits of labor, the first of which being dated October 12, 1979 (recorded March 14, 1980) and containing no mention of any amount

of money having been expended. The second of which was dated April 7, 1980 (recorded April 8, 1980) and states that not less than $800.00 worth of work was done on the claims between October 6, 1979 and March 10, 1980. Though not admitted, it seems logical that this second affidavit would include the work done on the claims in March, 1980 by the witness John Escapule, who testified he was paid $49.00 for some backhoe trenching work on the claims in early March, 1980. This would tend to support defendants' position that plaintiffs failed to complete the assessment work commenced or resumed on October 6, 1979 in a diligent and continuous manner.

To determine whether sufficient assessment work has been performed, the measure is the value of the work performed, not the amount paid for it, Wagner vs. Dorris, 73 P 318 (Ore. 1903), Norris vs. United Mineral Products Co., 158 P2d 679 (Wyo. 1945). However, the amount so paid is admissible as evidence tending to establish the value of the work, Stolp vs. Treasury Gold Min. Co., 80 P 817 (Wash.1905). If equipment is used in the performance of the assessment work, the reasonable value of the use of such equipment may be included as assessment work, Anderson vs. Robinson, 126 P 988 (Ore. 1912). In the instant case, the reasonable value of the use of the backhoe equipment has to be equal to the amount paid for the use of it. Except for two or three assays, there was no other work done. The backhoe and operator were hired at the then going rate of $25,00 per hour for eight hours to do exploration trenching, and that is all that was done for the eight claims and the $200.00 paid, or $25.00 per claim, is all it was worth. The same is true of the two hours of backhoe work done on the claims in March, 1980. Plaintiffs offered no testimony as how this work would have a value of any amount more than what was paid for it, but rather contended that they only needed to move a certain volume of material regardless of value or cost and that would suffice.

If a prior locator resumes assessment work after failure to perform the required annual assessment work for any given assessment year, and before there is a relocation, he is required to perform $100.00 worth of assessment work per claim for the current year. However, the work, once resumed, must be performed with diligence on a continuous basis until the requisite amount of $100.00 per claim for the current year is completed, Bishop vs. Baisley, 41 P 936 (Ore. 1895), McCormick vs. Baldwin, 37 P 903 (Cal. 1894) where the court said, "It is against the policy of the law, and a fraud against the government and the law, to hold quartz (lode) claims by merely doing a few dollars worth of work thereon at or near the beginning of the year next following the year on which claimant failed to do the necessary work, when such work is not commenced with the bona fide intention of being continued until the full amount is done. Such labor so done, is a mere pretense and sham and shall not prevent the location for want of necessary work". Because the prosecution of the work to completion with reasonable diligence is an element of a good faith resumption of work, it does not permit of a construction of the rule that an entire period can be gained by making a slight expenditure at the beginning of the year, Honaker vs. Martin, 29 P 397 (Mont. 1891). Hirshler vs. McKendricks, 40 P 1640 (Mont. 1895) wherein the court said, "When a locator avails himself of the statute (U.S. Code) and resumes work to protect himself from forfeiture, he must perform the work with diligence until the requirement for annual labor is completed", and held that a 15 day interruption of work without cause was not due diligence. Lindley stated that the claimant must resume work in good faith and prosecute same continuously and without

unreasonable interruption until the full amount of labor is performed, Lindley, Mines and Mineral Laws, Sec. 654 (3rd Ed. 1914). Otherwise the claim, or claims, become subject to forfeiture by relocation. It should be noted that if a locator is in default of his annual assessment work, he is no longer the owner of the exclusive possessory right, Holmes vs. Salamaca Gold Min & Mill. Co., 91 P 160 (Cal. 1907), and he must resume and complete that work as required by law before he regains that right.

Plaintiffs complained that defendants' location notices were defective or erroneous because the map or plat attached thereto showed the claims to be in the northwest quarter of the section rather than in the northeast quarter where they were in fact located, and therefore the locations were void. They also complained that the locations were void because the location notices describe onersize claims, i.e., 660 feet wide rather than the 600 feet specified by statute (U.S. Code).

A location notice which is merely defective or erroneous, is not void since it is capable of amendment, Nylund vs. Ward, 187 P 154 (Colo. 1919), and actual knowledge of the error and the location on the ground is equal to valid recorded notice, Atherly vs. Bullion Monarch Uranium Co., 335 P2d 71 (Utah 1959). In the instant case, the plaintiffs admitted having knowledge of the actual existence of defendants' monuments on the ground, and of the error in defendants' original location notices.

Defects or errors in a location, or location notice, do not result in a forfeiture, and no forfeiture will occur if the defects are corrected prior to the date of a subsequent location, Smart vs. Staunton, 29 Ariz 1, 239 P2d 514 (1925). An insufficient description in a location notice does not render a claim subject to forfeiture if a subsequent locator could, by reasonable diligence, have traced the claim on the ground, Francis vs. Jenkins, 9 Alaska 91 (1937), Smart vs. Staunton, supra.

When recording is not an essential act of location, a subsequent locator having knowledge of the locus of the claim, cannot question the sufficiency of the recorded location notice or the description of the claim, Sydney vs. Richards, 181 P 394 (Cal. 1919), Nylund vs. Ward, supra, bradshaw vs. Miller, 377 P2d 781 (Utah 1963). Although ARS 27-203 E. provides that failure to record location notices within the time allowed, "shall be an abandonment of the claim, and all right and claim of the discoverer shall be forfeited", the Arizona court in Perley vs. Goar, 22 Ariz 146, 195 P 532 (1921) held, "The failure to file location notices within the time fixed by statute does not render the location invalid, except as to adverse rights acquired before the filing". The 1913 Revised Statutes of Arizona, Title 34, Sec. 4031, in effect at the time, contained the same language as that quoted from ARS 27-203 E. above. Except in those states where recording is an essential act of location, the record serves only as constructive notice of the existence of the claim, its boundaries and extent, and a defect in the recorded location notice, or even a failure to record, is of no effect as to one who has actual knowledge of the location, Johnson vs. Ryan, 86 P2d 1040 (N.Mex. 1939).

A claim is not rendered void by reason of a discrepancey between the location notice and the monuments on the ground. When monuments are found on the ground, or their position or location can be determined with certainty, the monuments control over the description in the posted or recorded location notice. Treadwell vs. Marrs, 9 Ariz 333, 83 P350 (1905). In the instant case, plaintiffs admitted knowing of and seeing defendants' monuments on the ground, as well as the posted notices.

If a claim exceed 600 feet in width, the location is not void in its entirety, but is void only as to the excess, McElligott vs. Krugh, 90 P 823 (Cal. 1907), Thompson vs. Barton Gulch Min. Co., 207 P 108 (Mont. 1922). In Hayden Hill Con. Min. Co. vs. Lincoln Min. Co., 152 P 462 (Ida. 1945) the court stated, "The rule is well established in this state as elsewhere, that a location of an area in excess of that allowed by the statute is simply void as to the excess and that the inclusion of such excess of territory will not, per se, void the location; that is to say, it is only where the exterior boundaries include such an unreasonably excessive area, that the location will be held void". That court cited the earlier 1910 Idaho case of Nicholls vs. Lewis & Clark Min. Co., 109 P 846, where it was held that the attempted location of a claim 1065 feet by 2067 feet was entirely void as unreasonably excessive. Defendant Robert E. Cattany testified that the oversized claims of defendants were mistakes and there was no intention to acquire more ground than is legally allowed. There was no evidence offered that defendants acted in bad faith in making this mistake. In Vallasco vs. Mallory, 5 Ariz App 406, 427 P2d 540 (1967) the court held that until the locator of an oversize claim has a reasonable time, after notice, to draw in his lines, his right of possession extends to the entire claim. It should be noted that most of these cases cited involve a subsequent locator and the rights available to them in adverse proceedings. There were no subsequent locators to defendants' locations, but plaintiffs' rights in the same situations can be no greater than that of a subsequent locator.

Defendants amended their location notices on March 18, 1980, by recording and posting on the ground, the amended location notices which contained a new map or plat of the claims showing them to be located in the northeast quarter of the section rather than in the northwest quarter. However, only the map was wrong, no monuments on the ground had to be moved. ARS 27-202 C. states, "The notices may be amended at any time and the monument changed to correspond with the amended location, but no change whall be made which will interfere with the rights of others. If such amendment changes the exterior boundaries of the claim, a new or amended map, plat or sketch shall be recorded pursuant to ARS 27-203 showing such change. In the instant case, there was no testimony or evidence to show that defendants amendments interfered with anyones' rights, including plaintiffs'.

Defendant Robert E. Cattany testified that he took all required steps in perfecting his locations and the amendments thereof, including discoveries, some of which occurred a day or two after monumenting and posting the claims. With regard thereto, the court said in Brewster vs. Shoemaker, 63 P 309 (Colo. 1900) "The order of time in which these several acts (of location) are performed is not of the essence of the requirements, and it is immaterial that the discovery was made subsequent to the completion of the acts of location, provided only that all the necessary acts are done before intervening rights of third parties accrue".

Respectfully submitted,

Robert E. Cattany

Robert E. Cattany

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION II

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APPELLANT'S REPLY BREIF

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REPLY

Appellees complain that there were no witnesses other than Robert Cattany testifying (uncontroverted) as to what work was or was not done on the 8 Horne mining claims on or before August 31, 1979. Answering Brief (AB) - 4. In explanation, appellants would refer the Court to items 2,3,4,5 and 6 of the clerk's index on appeal, and state that appellants were, on September 10, 1981, offered either September 10 (Thur. P.M.) or September 15 (following Tues. A.M.) for trial dates. If time permitted, appellants may have had more witnesses, but since Robert Cattany's testimony was uncontroverted, appellants do not believe additional testimony was, or is, necessary on this issue.

It should be noted that the later work on appellees' 8 claims was clearly established as being done in March, 1980, and equally clear that the only work done on their claims during October, 1979, was on October 6, despite efforts in appellees' answering brief (AB) to make it appear otherwise. AB - 3,4,19 and 20.

The primary distinction between the doing of assessment work as required annually, and the resumption of assessment work by a dilinquent locator, is in the time and manner of performance. Annual assessment work can be done at any time during, or throughout, the assessment year, while resumed assessment work, once resumed, must be diligently completed without unreasonable delay in order to protect and preserve the locator's rights. Resumption of assessment work may defeat a relocation in progress, but if the resumed assessment work is not completed without unreasonable delay, or at all, it will not prevent or defeat an intervening or subsequent relocation.

The work done by appellees on their claims on October 6, 1979, was, at best, a resumption of their assessment work, and not merely a part of the annual assessment work to be performed during the assessment year starting September 1, 1979 and ending August 31, 1980. Accordingly, in order to protect and preserve their rights in the 8 claims, appellees had to complete that assessment work, once resumed, with due diligence and without unreasonable delay.

Between October 6, 1979 and March 10 or 11, appellees did no assessment work on their 8 claims, a delay of 5 months, but they would have the Court believe that the delay was only about 8 days and therefore quite reasonable. AB - 19. To arrive at this 8 day figure, appellees use a beginning date of October 10, an erroneous date used in their first affidavit of labor, exhibit #8 in evidence, and an ending date of October 18, the date of appellants' locations or relocations. There was no testimony or evidence presented that appellees did any assessment work on October 18, or that they were prevented from doing any assessment work at any time. The testimony was that appellants decided that 11 or 12 days (Oct. 6 to Oct. 18) was an unreasonable delay and did not constitute due diligence in completing the resumed assessment work.

Appellees recognized that the work done on October 6, 1979, did not satisfy the $800.00 worth of assessment work required, claiming in their second affidavit of labor, exhibit #9 in evidence, that the required assessment work included work done through March 10, 1980. Both affidavits of labor are signed by appellee W.W. Grace, who is represented as being quite knowledgeable about mining claims and mining. Apparently W. W. Grace was appellees' expert witness and the lessee of the 8 mining claims, whereunder he was obligated to perform the annual assessment work. In the

testimony of W.W. Grace, after describing the work done on October 6, 1979, he went on to say -- "so I figured that this work, plus crosscut there of another hundred -- maybe 150 feet -- I don't recall the exact dimensions of it -- was more than enough work necessary to meet the federal requirements". RT - 36. It being clearly established by subsequent testimony and evidence that the "crosscut" W.W. Grace referred to was the work done in March, 1980. RT - 44, 45, 46, 60, 90, 91. In further substantiation, witness Johnnie Escapule was asked by appellees on cross-examination, -- "You understood, or tell me whether or not you understood, that this work (March, 1980) was being done as part of the annual assessment work". To which Mr. Escapule answered -- "Yes, sir". RT - 91. Appellees then proceeded to establish the fact that Mr. Escapule knew what assessment work was. RT - 91,92. It should be noted that appellants' direct examination of Mr. Escapule made no reference to the work he did in March, 1980 as being assessment work, and the words "assessment work" were not mentioned in the direct examination. RT - 87,88,89,90,91. Even by claiming both the October and March work as applicable assessment work, it is difficult to understand how, if the $200.00 back hoe work in October did not satisfy the $800.00 worth of assessment work requirement, the deficiency could be made up by the $49.00 back hoe work done in March. That is, of course, if the $49.00 back hoe work in March could be considered, in view of the 5 month delay which would appear to be unreasonable.

Appellees state that it is indisputed that a substantial amount of work was done on October 6, and go on to say that -- "--this is therefore not the situation of a meager amount of work being performed as a pretense and sham, as in McCormick v. Baldwin, 37 P 903 -". In this case, appellees, in resuming their assessment work, had 8 hours work done on their 8 mining

claims, or the equivalent of 1 (one) hour work on each claim. In McCormick v. Baldwin, supra, the locator of mining claims in default for assessment work, resumed his assessment work by going onto the claims and doing 3 (three) hours work on each claim, for which the court said:

> "It is against the policy of the law, and a fraud against the Government and the law, to hold quartz (lode) claims by merely doing a few dollars worth of work thereon at or near the beginning of the year next following the year on which claimant failed to do the necessary work, when such work is not commenced with the bona fide intention of being continued until the full amount is done. Such labor so done, is a mere pretense and sham and shall not prevent the location for want of necessary work.".

Appellees' first affidavit of labor fails to state the value of the work performed, or the dollars worth of work and improvements done, as required by ARS 27-208. Appellants question whether an affidavit of labor, so basically defective, constitutes prima facie evidence of anything of importance to this case, or creates any greater burden on appellants to prove that the assessment work was not done. In view of such defective affidavit, it is appellants' position (but not admitting that appellants have not carried the burden of proof) that the burden of proof at least shifted and appellees were required to prove the value of their resumed assessment work done on October 6, if, as appellees speculate, it was worth more than what they paid for it.

If 5 months is an unreasonable delay in the performance of resumed assessment work, then the work appellees had done in March, 1980 and their second affidavit of labor which included that work, would be immaterial and of no consequence because of appellants' intervening rights.

Based upon the foregoing and the arguments and authorities set forth in their opening brief, appellants believe they have sufficiently established by clear and convincing evidence that appellees did not do the

required amount of assessment work on October 6, 1979, in order to protect and preserve their rights to the 8 Horne mining claims, and did no further work until March, 1980. Therefore, appellants were justified in making their locations, or relocations, on October 18, 1979, and thereby terminated any rights appellees may have had in the ground in question by reason of the 8 Horne mining claims.

Respectfully submitted,

by Robert E. Cattany

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Two copies of the foregoing Appellants' Reply Brief was mailed this 23rd day of June, 1982, to:

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IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION TWO

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ARIZONA REVISED STATUTES:

OTHER AUTHORITY:

STATEMENT OF THE CASE

Plaintiffs Appellees JAMES STEWART COMPANY, M. SETH HORNE, and W. W. GRACE accept the Statement of the Case set forth in the Opening Brief at 2.

MEMORANDUM

This Answering Brief will use the following references: the Plaintiffs - Appellees will be referred to collectively as "Appellees" or individually by name; Defendants - Appellants will be referred to as "Appellants" or by name. "R.T." will refer to the Reporter's Transcript of Proceedings before the Superior Court, Cochise County, on September 15, 1981. "Record _____" will refer to one or more pages of the certified Record on Appeal.

STATEMENT OF FACTS

On appeal, the facts must be viewed in the light most favorable to supporting the trial court's findings and judgment. Howard P. Foley Co. v. Harris, 10 Ariz. App. 78, 456 P.2d 398 (1969). Where, as here, there are no specific findings of fact, all inferences to be drawn from the evidence must be drawn in favor of the judgment. Backman v. Backman, 127 Ariz. 414, 621 P.2d 920 (Ct. App. 1980).

The James Stewart Company is the owner of certain federal unpatented mining claims in the Northeast Quarter of Section 20, Range 22 East, Township 20 South, G. & S.R.B. & M., in the Tombstone Mining District in Cochise County, Arizona. R.T. 7-8; Plaintiffs' Exhibit 5 in evidence. These lode claims are known as Horne 110 through 117, inclusive, and were originally located by M.S. Horne in 1967. Plaintiffs' Exhibit 5 in evidence. Appellee M. Seth Horne is president of James Stewart Company. R.T.6. Appellee W. W. Grace leased the Horne lode claims from the James Stewart Company in October, 1979. R.T. 25.

Except for the claim of Appellants, there was nothing presented to the trial court to indicate that Appellees are not entitled to possession of the claims.

Appellant Robert Cattany testified that he could find no Affidavit of Labor Performed and Improvements made for the assessment year ending August 31, 1979. R.T. 70. There was,

however, no testimony from any other witness about what work was or was not done on or before that date. (Appellees will not argue in this Brief that assessment work was done for the assessment year ending August 31, 1979.)

On October 6, 1979, work was begun on the claims for the assessment year beginning September 1, 1979. R.T. 33 et seq. Mr. Grace, the lessee, testified that he signed an Affidavit of Labor Performed and Improvements made on October 12, 1979, for work performed on the Horne claims between October 6th and 10th. R.T. 33; Plaintiffs' Exhibit 8 in evidence. Mr. Grace testified that the work consisted of backhoe trenching (east-west) of a length of about 300 feet - amounting to a displacement of 144 cubic feet of earth per claim, R.T. 36; at some later undetermined date, Mr. Grace had additional north-south trenching performed and took several (perhaps three) assays. R.T. 60-61. (Plaintiffs' Exhibits 14 through 17, inclusive, are photographs that fairly depict the appearance of the earth at the claims October 6 through 10, 1979. R.T. 39) Mr. Grace paid Mr. Ernest H. Encapule (who, assisted by his son, Johnnie, did the trenching) $200.00 for the work of October 6th. Mr. Grace testified that for the north-south trench dug later, he may have paid Mr. Encapule $100 (R.T. 62); The Encapules set the figure at $49.00 (R.T. 90 and 96). There was no evidence concerning the value of the assays that were taken. The only evidence concerning the

value of the October 6th work was presented by Appellees.

Mr. Grace testified that, in his opinion, "the work that was done on October the 6th alone was enough to justify the amount of work required by the federal government..." R.T. 65. He did not believe that the later work, which was performed within 30 days of October 19, 1979 (R.T. 51), was necessary to meet the requirements for assessment work. R. T. 65. Mr. Grace had worked as a miner in the Tombstone mining district for about three and a half years and had staked and worked mining claims over a span of about 48 years. R.T. 31.

Before Mr. Grace had begun work, Mr. Cattany had taken an interest in the claims. After checking the records in the office of the Cochise County Recorder, Mr. Cattany entered the property on October 4, 1979 (there is no evidence as to whether he entered one, some, or each of the eight Horne claims), and took measurements. He did not then post any notices or make any claims. R.T. 70. On October 8, 1979, Mr. Cattany returned to the property and discovered the trenching work. R.T. 71. On October 18, 1979, Mr. Cattany posted his notice of location of the claims (re-naming them as Rocky 1 through 8, inclusive), having made a legal determination that Appellees had failed to exercise due diligence with regard to the work begun on October 6th. R.T. 71 and 74.

The location notices that Mr. Cattany posted and recorded contained an erroneous legal description. Whereas the Horne claims are in the northeast quarter of Section 20, Range 22 East, Township 20 South, Mr. Cattany placed his "Rocky" claims in the northwest quarter. R.T. 72. Further, Mr. Cattany's notices stated the dimensions of each claim as 660 feet by 1320 feet rather than the allowable 600 feet by 1500 feet. R.T. 29.

Mr. Cattany placed stakes on the claims to monument them. R.T. 40 and 71. Mr. Grace first saw the stakes and notices on about October 20, 1979 (R.T. 40); there is no evidence that the other appellees or any agent of theirs had knowledge of the monumenting or the notices before then. It was not clear to Mr. Grace how Mr. Cattany had made the mistake - whether the monuments or the notices were wrong. Mr. Grace did not measure the area encompassed by the stakes. R.T. 43. Mr. Cattany himself testified that he was unable to say if the monuments were set in proper dimensions. R.T. 83.

On March 17, 1980, Mr. Cattany amended his location notices and plat to correct the erroneous legal description. Opening Brief at 4. He did not, however, cure the monument defect until August, 1981, about three weeks before trial. R.T. 81-82.

Mr. Roger Smith, former property manager for the James Stewart Company, twice wrote to Mr. Cattany to request that

he relinquish possession of the claims, to no avail. R.T. 20.

In August, 1981, Appellees did the required assessment work for the 1980-1981 assessment year, as evidenced by an Affidavit of Labor Performed and Improvements Made dated August 27, 1981. R.T. 16 and 18; Plaintiffs' Exhibit 2 in evidence.

ISSUE PRESENTED

DID THE TRIAL COURT CORRECTLY RULE THAT APPELLANTS HAD NO RIGHT TO POSSESSION OF THE MINING CLAIMS ON OCTOBER 18, 1979?

A. COULD THE TRIAL COURT HAVE FOUND THAT THE ASSESSMENT WORK HAD BEEN COMPLETED OCTOBER 6, 1979?

B. COULD THE TRIAL COURT HAVE DETERMINED THAT APPELLANTS' ATTEMPTED RELOCATIONS WERE INVALID?

1. COULD THE ATTEMPTED RELOCATIONS HAVE BEEN INVALID BECAUSE OF IMPROPER DIMENSIONS?

2. COULD THE ATTEMPTED RELOCATIONS HAVE BEEN INVALID BECAUSE OF THE ERRONEOUS LEGAL DESCRIPTION?

C. COULD THE TRIAL COURT HAVE FOUND THAT APPELLANTS HAD RESUMED WORK SO AS TO AVOID FORFEITURE?

ARGUMENT

THE TRIAL COURT CORRECTLY RULED THAT APPELLANTS HAD NO RIGHT TO TAKE POSSESSION OF THE PROPERTY ON OCTOBER 18, 1979

This case was brought by Appellees in order to recover possession of the unpatented federal mining claims Horne 110 through 117, inclusive, Record 1, et seq pursuant to 30 U.S.C. 53, which states that "each case shall be adjudged by the law of possession". Counsel for both parties agreed in statements to the trial court that the central issue in the case was whether Mr. Cattany had any relocation rights as of October 18, 1979: see R.T. 98-99 (for Mr. Atonna's remarks) and 101 (for those of Mr. Cattany).

This central issue can best be examined by dividing them into three sub-issues, rather than the six issues discussed in Appellants' Opening Brief. The three, detailed below, pertain to: (A) whether Appellees had forfeited their claims; (B) whether Appellants' purported relocations were valid; and (C) whether, Appellees had resumed assessment work. The trial court did not make specific findings of fact (except as to the ultimate fact that Appellants were guilty of forcible detainer), so it is not known for what reasons it made its decision. Appellees submit, therefore, that if there is any valid reason for upholding the

trial court's judgment, this Court should so uphold it. Coronado Co., Inc. v. Jacome's Dept. Store, Inc., 129 Ariz. 137, 629 P.2d 553 (Ct. App. 1981).

A. THE TRIAL COURT COULD HAVE DETERMINED THAT THE ASSESSMENT WORK HAD BEEN COMPLETED OCTOBER 6, 1979.

On each unpatented federal mining claim, one hundred dollars' worth of labor or improvements (not necessarily synonymous with an expenditure of one hundred dollars) must be performed or made each year. 30 U.S.C. 28. The purpose of the requirement is to prevent speculators from monopolizing public mineral lands. 54 Am. Jur. 2d, Mines & Minerals, Section 68. Failure to perform the required assessment work, however, does not automatically result in a forfeiture of the claims, but simply renders the claims subject to relocation. Edwards v. Anaconda Company, 115 Ariz. 313, 565 P.2d 190 (Ct. App. 1977); see also Wiltsee v. Utley, 79 Cal. App. 2d 71, 179 P.2d 13 (1947), and Inman v. Ollson, 213 Or. 56, 321 P.2d 1043 (1958).

The law does not favor forfeitures of mining claims, so the burden of proof is on the subsequent locator to prove by clear and convincing evidence the failure to do the assessment work. McDermott v. O'Brien, 2 Ariz. App. 429, 409 P.2d 588 (1966); Pascoe v. Richards, 201 Cal. App. 2d 680, 20 Cal. Rptr. 416 (1962); Inman v. Ollson, supra.

What clear and convincing evidence did Appellants pro-

duce that Appellees had forfeited their claims on October 18, 1979? None. All that Mr. Cattany could state was that he saw no additional work done on the property during the twelve days from October 6th to October 18th. R.T. 74. He did not himself express his opinions about the value of the work performed on October 6th. Appellants did present evidence as to what was paid to the Encapules for the work, but not as to what the work was worth. 30 U.S.C. 28 requires that "not less than one hundred dollars' worth of labor shall be performed or improvements made..." There is no requirement for any expenditure at all. The work may be sufficient even if done for free. MacDonald v. Cluff, 68 Ariz. 369, 206 P.2d 730 (1949). The test is not what is paid, but what the work is worth. In Schlegel v. Hough, 182 Or. 441, 186 P.2d 516, rehearing denied 182 Or. 441, 188 P.2d 158 (1947), the court held that the Defendant's subsequent claimant had the burden of proving that certain work was not worth $100; the worker was paid nothing except whatever gold he could find. The only evidence as to value defendant could offer was testimony from an interested witness, which the Court dismissed:

> "Work actually having been performed for assessment purposes, we think that, under the circumstances, the requirements of clear and convincing evidence of forfeiture were not met by the mere testimony of an interested witness that he was unable to see that any work was done. Equity will not lend its aid to the extinguishment of a legal right upon such meager evidence. Forfeitures are odions to the law."

186 P.2d at 519.

The Court reversed the trial court's decree in favor of the defendant and directed the entry of one quieting title in plaintiff, the prior locator.

In the present case, the reasons for finding in favor of the prior locator are even more compelling. In Schlegel, the plaintiff had not filed his Affidavit of Labor Performed. In the present case, Appellees made two Affidavits for the 1979-1980 year, one on October 12, 1979 (before Appellants attempted to relocate), and the other on April 7, 1980, pertaining to work done on or before March 10, 1980 (before Appellants amended their notices). Plaintiffs' Exhibits 8 and 9 in evidence. The Affidavit of October 12th, which was recorded (R.T. 33), constitutes prima facie evidence of the performance of the labor or improvements. A.R.S. 27-108.

It is true, as Appellants state, that the amount paid for work can be evidence of its value. Opening Brief at 8. From that proposition, however, Appellants reach the erroneous conclusion that it was somehow Appellees' burden to show "how the $200 paid for the backhoe trenching work done on October 6, would have any greater value than what was paid for it." Opening Brief at 9. Appellants overlook that it was their burden to prove that the work was not worth $100 for each of the eight lode claims. Appellants also overlook the fact that the Encapules were not the only workers on the claims on October 6, 1979: Mr. Grace was

there also. R.T. 49. His October 12th Affidavit states that he supervised the Encapules' trenching work. Plaintiffs' Exhibit 8 in evidence. Mr. Grace has been in the mining business for 48 years, R.T. 31; presumably his supervision has some value. The trial court could well have determined that the value of the trenching work by the Encapules and the value of Mr. Grace's expertise together amounted to $800 or more. The value of assessment work is a question of fact, Pascoe v. Richards, supra, and the trial court had sufficient evidence before it - consisting of the Affidavit, Mr. Grace's opinion about the value of the work, and testimony about the work itself - to have found against Appellants.

B. THE TRIAL COURT COULD HAVE DETERMINED THAT APPELLEES' ATTEMPTED RELOCATIONS WERE INVALID.

A.R.S. 27-206 states that the relocation of a claim shall be made in the same manner as other locations, with one exception pertaining to resurveying of the claims or verification of boundaries and position of the claims under a previously recorded map or plat. A.R.S. 27-202 sets forth the requirements of the location notice, which must be posted (and recorded under A.R.S. 27-203). The notice must contain, among other things:

> "4. The length and width of the claim in in feet, and the distance in feet from the location monument to each end of the claim.

"5. The general course of the claim.

"6. ... (I)f known to the locator, the identification of the section, township, and range in which the notice of location of the claim is posted."

Under subsection (B) of the statute, "until the requirements of subsection A are complied with, no right of location is acquired."

A.R.S. 27-203 requires, among other things, the recording of such notice within 90 days of the time of location. Along with the notice, a map or plat of the claim must also be recorded. The map or plat must set forth among other things, the following: "...the boundaries and position of the claim with such accuracy as would permit a reasonably knowledgeable person to find and identify the claim on the ground" (subsection (B)(3)); and "(t)he locality of the claim with reference to the section, township and range in which the claim is located..." (subsection (c) (3)).

A.R.S. 27-203(E) states, "failure to do all the things within the times and at the places specified in subsections A, B, C and D shall be an abandonment of the claim, and all right and claim of the locator shall be forfeited."

The evidence is undisputed that Mr. Cattany's notice stated the boundaries of each claim as 1320 feet by 660 feet, rather than 1500 foot by 600 foot boundaries allowed under 30 U.S.C. 23. The error was not corrected in his amended notice.

It is also undisputed that Mr. Cattany's plat placed each claim not in the northeast quarter of Section 20, Range 22 East, Township 20 South, but in the northwest quarter. That particular error was corrected in the March 17, 1980, amendment.

Appellees contend that because of the errors in Mr. Cattany's notice and plat, he either never achieved any valid relocation, or, if he did, he forfeited his rights.

1. The attempted relocations could have been invalid because of improper dimensions.

A.R.S. 27-202(A)(4) requires that a notice state the length and width of each claim in feet. The notice did not; it stated a length and width for each claim that, under the law, it could not possibly have. A.R.S. 27-203(A)(5) requires that the notice state the general course of each claim. As to each claim, Mr. Cattany's notice describes a course using the same incorrect boundaries.

A.R.S. 27-202(B) states that unless these requirements are met, "no right of location is acquired." In other words, the attempted location is void.

It is true, as Appellants note, that it has been held that an area located in excess of statutory boundaries is only void as to the excess. Hayden Hill Consol. Mining Co. v. Lincoln Mining Co., 66 Idaho 430, 160 P.2d 468 (1945); see also Velasco v. Mallory, 5 Ariz. App. 406, 427 P.2d 540 (1967).

It does not appear, however, that the courts that have so decided have construed a statute such as A.R.S. 27-202(B), which states explicitly that unless the requirements of subsection (A) are complied with, there is no right of location.

2. The attempted relocations could have been invalid because of the erroneous legal description.

The plat attached to the Appellants' October 18, 1979, notice showed the claims as being located in the wrong quarter of Section 20. Under A.R.S. 27-202(A), Mr. Cattany did not have to specify a quarter of the section, nor even attach a map or plat to the notice. Having done so, however, Appellant should have provided the correct quarter on a correct plat.

The requirements of A.R.S. 27-203 regarding plats are somewhat stricter. Subsection (B)(3) states that the boundaries and location of each claim be sufficient to "permit a reasonably knowledgeable person to find and identify the claim on the ground". Whether a claim has been described adequately is a question of fact. Couch v Clifton, 626 P.2d 731 (Colo. App. 1981). It should not subject to serious dispute that the claims were inadequately described. Had a reasonably knowledgeable person attempted to follow Appellants' October 18, 1979, plat, he would have found himself in the wrong quarter looking for claims of the wrong size.

Appellants assert that their March 17, 1980, amendment corrects the deficiency. Opening Brief at 9-10. They are mistaken. Under A.R.S. 27-202(C), the notice may be amended "and the monument changed to correspond with the amended location, but no change shall be made which will interfere with the rights of others". (emphasis added) The conjunctive suggests that amendments are permitted by the statute if, but only if, the actual location is changed - that is, if the physical boundaries of the claim are altered. Here, the boundaries of the claims were not changed, merely the erroneous plat depicting those claims. Further, even assuming that the plat could be amended, it was not done in a timely fashion. A.R.S. 27-202(C) continues: "If such amendment changes the exterior boundaries of a claim, a new or amended map, plat or sketch shall be recorded pursuant to Section 27-203 showing such change". Under A.R.S. 27-203, the map or plat must be recorded within 90 days from the date of location. In this case, assuming there were actually a relocation, it occurred on October 18, 1979. The amendment was not recorded until March 20, 1980 - about two months too late.

Under A.R.S. 27-203(E), the deficiencies of the plat stripped Appellants of all their relocation rights, if any.

Appellants argue that their deficient plat is irrelevant because Appellees supposedly knew what Mr. Cattany was claim-

ing. Opening Brief at 10. It is not exactly clear from the record what Appellees knew or believed, or at what time they came to know or believe it. It seems that about October 20, 1979, Mr. Grace saw "stakes all over the place", although he didn't know what the boundaries were. R.T. 43. He then read one of the location notices that had an erroneous plat. R.T. 40. It is not clear whether Appellees believed the plat was wrong or the monuments were wrong:

> "Q (BY MR. CATTANY) So you had notice the claims were filed in the northeast quarter because you saw --
>
> "A (BY MR. GRACE) I wouldn't say they were filed there, but the post was there. The location notices were in the wrong place, according to the legal description."

R.T. 64.

It appears from the record that Mr. Grace and Mr. Cattany had a discussion around November 1, 1979, R.T. 62, but it is not clear at all that Mr. Grace knew even then what mistake Mr. Cattany had made:

> "Q (BY MR. CATTANY) I believe you also state, and you stated in your complaint, that changing the location of the mining claims, in violation of A.R.S. Section 27-202(C), interfered with your rights.
>
> "A (BY MR. GRACE) Well, we discussed it at the time and I told you you filed in the wrong quarter section. And you said you didn't make the mistake, that you were a mining engineer and surveyor and you didn't make those kinds of mistakes".

R.T. 62-63.

As far as Appellees could tell, Appellants could well have had the correct quarter and the wrong physical location rather than the other way around.

In view of the erroneous legal description on the plat attached to the notice, the erroneous boundaries, and the fact that the notice never referred to the claims by their former names (the claims were renamed), it is not fair to charge Appellees with "detailed information of the nature, extent, and location" of Appellants' attempted relocations. See Steele v. Preble, 158 Or. 641, 77 P.2d 418 (1938). The question is one of the totality of the circumstance surrounding Mr. Cattany's notices and plat. Is it really equitable, considering the serious defects, that he should thereby acquire any possessory rights to these mining claims?

C. THE TRIAL COURT COULD HAVE FOUND THAT APPELLEES HAD RESUMED WORK SO AS TO AVOID FORFEITURE.

Even if Appellees had not completed the required assessment work on October 6, 1979, as argued above, Appellants would still not be able to prevail. On October 6th the Appellees had at least resumed the assessment work.

When the owner of an unpatented federal claim fails to perform the assessment work, the claim is not automatically forfeited; the claim becomes "subject to relocation at any time prior to resumption of the assessment work by the owner of the superior claims". Edwards v. Anaconda Company, supra,

115 Ariz. 313, 317, 565 P.2d 190, 194 (Ct. App. 1977) (emphasis added); Inman v. Ollson, supra, 213 Or. 56, 321 P.2d 1043 (1958). If resumption is all that is required to defeat relocation, it follows that there need not be completion so long as the work is continued to ultimate completion without unreasonable interruption. See McCormick v. Baldwin, 104 Cal. 227, 37 P. 903 (1894); McKay v. McDougall, 25 Mont. 258, 64 P. 669 (1901). Whether there has been a sufficient resumption of work to prevent a forfeiture is a question of fact for the trial court. Crane v. French, 39 Cal. App. 2d 642, 104 P.2d 53 (1940).

In the present case, it was undisputed that a substantial amount of work was done on October 6th. (This is, therefore, not the situation of a meager amount of work being performed as a pretense and sham, as in McCormick v. Baldwin, supra.) The Affidavit of October 12th states that the work was done through the 10th. Mr. Cattany testified that he made a conclusion of law that, because Appellees did not continue work on October 18th, he was entitled to relocate. R.T. 74. Appellees submit that an eight-day interruption is not, as a matter of law, unreasonable. The trial court could well have found as a fact that it was, but it did not. It was not required to do so.

Appellants cite Hirschler v. McKendricks, 16 Mont. 211, 40 P. 290 (1895), in support of their contention that the

assessment work was not continued diligently after resumption. Hirschler did indeed involve a 15-day interruption (which is substantially greater than the interruption in the present case), but it is important to bear in mind that the Montana court affirmed a jury's finding of fact that a 15-day delay was unreasonable. The Court did not hold that the delay was unreasonable as a matter of law.

The evidence is not seriously in dispute that, even if Mr. Grace had not done the full amount of work between October 6 and 10, 1979, the work was completed "a short time after (Mr. Cattany) had made (his) location notices..." R.T. 50.

The trial court was justified in finding that Appellees' assessment work was resumed, and that it was continued without unreasonable interruption until completion.

CONCLUSION

For all the above reasons, Appellees submit that the Judgment of the trial court was justified by the law and the evidence and that, therefore, it should be affirmed by this Court.

Appellees request that this Court award them their costs pursuant to A.R.S. 12-1182, which is applicable to the Court of Appeals. Morgan v. Continental Mortgage Investors, 16 Ariz. App. 86, 491 P.2d 475 (1971).

RESPECTFULLY SUBMITTED this _____ day of June, 1982.

GREENWOOD, RYAN, HERBOLICH & ATONNA, Ltd.
855 Cochise Avenue, Douglas, Arizona 85607

By: _____
ARTHUR C. ATONNA

By: _____
WALLACE R. HOGGATT

CERTIFICATE OF SERVICE

STATE OF ARIZONA)
: ss.
County of Cochise)

WALLACE R. HOGGATT, being first duly sworn, states that he is one of the attorneys for the Appellees herein; that on June 10, 1982, he caused to be deposited in the United States mails two copies of the Appellees' Answering Brief to:

ROBERT E. CATTANY
4530 E. River Road
Tucson, Arizona 85718

Attorney for Appellants

WALLACE R. HOGGATT

SUBSCRIBED AND SWORN to before me this 10th day of June, 1982.

NOTARY PUBLIC

My Commission Expires:

January 9, 1984

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION II

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W.W. GRACE, Plaintiffs/Appellees, -vs- ROBERT E. CATTANY and JUNE CATTANY, husband and wife, Defendants/Appellants.	2CA-CIV 4371 Cochise County No. 40466

APPELLANT'S OPENING BRIEF

Robert E. Cattany
4530 E. River Road
Tucson, Arizona 85718

Attorney for Appellants

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION II

JAMES STEWART COMPANY, an Arizona corporation; M. SETH HORNE; W.W. GRACE,	)	
Plaintiffs/Appellees,	)	2CA-CIV 4371
-vs-	)	Cochise County No. 40466
ROBERT E. CATTANY and JUNE CATTANY, husband and wife,	)	
Defendants/Appellants.	)	

APPELLANT'S OPENING BRIEF

Robert E. Cattany
4530 E. River Road
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TABLE OF CITATIONS

STATEMENT OF THE CASE

This case was brought as forcible entry and detainer to determine right to possession of unpatented federal lode mining claims. The complaint was filed on August 19, 1981 and served on the defendants/appellants on August 30, 1981. It was tried befpre the Court without a jury as a half-day case on September 15, 1981, by the Superior Court of Arizona in and for the County of Cochise. The Court entered its judgment in favor of the plaintiffs/appellees on November 16, 1981.

Defendants/appellants filed a notice of appeal and cost bond on December 16, 1981. No cross appeal was filed.

The Court of Appeals has jurisdiction of this appeal from the Superior Court judgment pursuant to ARS Section 12-2101B.

MEMORANDUM

In the interest of simplicity, James Stewart Company; M. Seth Horne; and W.W. Grace, appellees herein, will be referred to as "Stewart". Robert E. Cattany and June Cattany, appellants herein, will be referred to as "Cattany". The reporter's Transcript of Proceedings will be abbreviated "TP" followed by a number indicating the page or pages. The Abstract of Record will be abbreviated "AR" followed by a number indicating the number assigned to that item by the clerk. Exhibits will be referred to by their assigned number or letter.

STATEMENT OF FACTS

James Stewart Company is a corporation of which M. Seth Horne is president and Harvey L. Hays is property manager. TP 22. Mr. Hays was present representing the company and Mr, Horne was not present at the trial. On September 20, 1967, M. Seth Horne, as trustee, located eight unpatented lode mining claims known as the Hornes #110 through #117, situated in Section 20, T20S, R22E, Cochise County, Arizona. Plaintiffs' Exhibit 5 in Evidence.

In August, 1979, W.W. Grace entered into an agreement whereby he leased the eight Horne claims from M. Seth Horne. Plaintiffs' Exhibit 13 in Evidence. Mr. Grace resides in Scottsdale, Arizona and is in the mining, oil, real estate and insurance businesses. TP 24.

No assessment work was done on the eight Horne claims for the assessment year ending on August 31, 1979, and no affidavit of assessment work was recorded for that year or for the previous assessment year ending August 31, 1978. TP 52,70.

On or about October 4, 1979, Cattany entered the area covered by the eight Horne claims for the purpose of making mining claim locations. After doing some preliminary work he left the area in the morning of October 6 and returned on Monday morning, October 8, to proceed with the location work. At that time he noticed new trenching work done on the property which he learned was done by John Escapule on October 6, as assessment work for W.W. Grace. TP 70,71. The job took Escapule about eight hours with a backhoe for which he charged, and was paid,

$200.00, the usual rate for backhoe work in the area at that time. TP 90, 95. Cattany did not proceed with his location work, but waited to see if any further assessment work was going to be done. No additional work was done on the property by anyone during the next ten days, and on October 18, Cattany proceeded to locate eight lode mining claims, naming them the Rockys #1 through #8. These claims covered the same ground as was covered by the eight Horne claims, i.e., the Northeast Quarter of Section 20, T20S, R22E, Cochise County, Arizona. Defendants' Exhibit A in Evidence.

Cattany's location notices contained a plat map erroneously showing the eight Rocky claims as being located in the Northwest Quarter of Section 20 rather than the Northeast Quarter of Section 20. In addition, the location notices and plat maps showed the eight Rocky claims as being 660 feet in width rather than the statutory 600 feet, Defendants' Exhibit A in Evidence, but each claim only encompassed the maximum allowable area of 20 acres. On March 17, 1980, Cattany amended the location notices for the eight Rocky claims, to show the claims on the plat map to be in the Northeast Quarter of Section 20. Defendants' Exhibit A in Evidence. In August, 1981, Cattany had the eight Rocky claims measured and remonumented to insure that they were not over 600 feet in width. TP 81,82.

On March 10, 1980, W.W. Grace had John Escapule do some additional backhoe trenching work on the eight Horne claims, for which he charged and was paid $49.00. TP 88.89. In addition to the trenching work, W.W. Grace had two or three assays made, which didn't amount to much. TP 59.

ISSUES PRESENTED

1. The status of a locator's exclusive right to possession of his unpatented mining claims following a failure to do the required annual assessment work.

2. The rights of a locator who commences or resumes the performance of annual assessment work after failing to do it for the prior year or years.

3. The effect on a locator's right to exclusive possession of his mining claims when he resumes performance of the assessment work, but does not complete it in a timely manner, or at all.

4. The rights of a locator who initiates mining claim locations over prior mining claims for which the assessment work had been resumed but not completed.

5. Whether mining claims locations are void by reason of errors in the location notices describing where the claims are situated.

6. Whether mining claims locations are void by reason of locating claims 660 feet wide and 1320 feet long, rather than 600 feet wide and 1500 feet long.

ARGUMENTS

The Trial Court Erred In Finding In Favor Of Stewart, Because The Finding Was Contrary To The Evidence And Law Presented, In That Stewart, Having Resumed Its Assessment Work, Failed To Complete It In A Diligent And Continuous Manner, And Cattany's Locations Were Validly Made At A Time When Stewart's Claims Were Subject To Forfeiture By Relocation.

1. The Evidence Presented Showed That Stewart Had Not Done The Assessment Work On The Eight Horne Claims For The Assessment Year Ending August 31, 1979, And Therefore The Claims Were Subject To Forfeiture By Relocation On September 1, 1979.

The law requires that at least $100.00 worth of labor and/or improvements be expended each year on each unpatented mining claim for the locator to maintain the right to exclusive possession thereof. 30 USCA Section 28. Otherwise, the claim becomes subject to forfeiture by relocation. Edwards v. Anaconda Co. (1977) 115 Ariz 313, 565 P2d 190. The forfeiture does not happen automatically on the first day of the new assessment year (September 1), but occurs when a new or relocation is made before the delinquent locator resumes the assessment work. Pasco v. Richards (1962) 20 Cal Rptr 416, 201 C.A. 2d 680.

It should not be subject to serious doubt that Stewart had failed to do the annual assessment work for the eight Horne claims for the assessment year ending August 31, 1979. The testimony alleging the failure to do the assessment work for that year was uncontroverted, TP 70, and there

was no evidence or proof presented by Stewart that this assessment work had been done. Therefore, on September 1, 1979, Stewart's right to exclusive possession of the eight Horne claims was lost and the claims were subject to forfeiture by relocation.

2. When Stewart Resumed The Assessment Work On The Eight Horne Claims On October 6, 1979, It Conditionally Reacquired Its Right To Exclusive Possession, But Never Completed The Assessment Work And Thereby Lost Its Reacquired Right.

The law provides that the locator of a mining claim which is subject to forfeiture by relocation for failure to perform assessment work, can, prior to relocation by another, resume the performance of the assessment work and thereby regain his right of exclusive possession. 30 USCA Section 28. However, through abuses of this provision by locators, the courts have interpreted the law and its application, to require completion of the assessment work once resumed. McCormick v. Baldwin, 37 P 903, (Cal. 1894), where the court said, "It is against the policy of the law, and a fraud against the government and the law, to hold quartz (lode) claims by merely doing a few dollars worth of work thereon at or near the beginning of the year next following the year on which claimant failed to do the necessary work, when such work is not commenced with the bona fide intention of being continued until the full amount is done. Such labor so done, is a mere pretense and sham and shall not prevent the location for want of necessary work.". Because the prosecution of the work to completion with reasonable diligence is an element of a good faith resumption of work, it does not permit of a construction of the rule that an entire period can be gained by making a slight expenditure at the beginning of the year. Honaker v. Martin, 29 P 397 (Mont. 1891). The court said in Hirshler v.

McKendricks, 40 P 1640 (Mont. 1895), "When a locator avails himself of the statute and resumes work to protect himself from forfeiture, he must perform the work with diligence until the requirement for annual labor is completed", and held that a 15 day interruption of work without cause was not due diligence. Lindley states that the claimant must resume work in good faith and prosecute same continuously and without unreasonable interruption until the full amount of labor is performed, Lindley , Mines and Mineral Laws, Sec. 654 (3rd Ed. 1914). Therefore, a locator's right to exclusive possession of a mining claim, lost for failure to do assessment work, re-attaches upon resumption of the assessment work, but is conditional upon the completion of the work.

3. When Stewart Lost Its Reacquired Right To Exclusive Possession Of The Eight Horne Claims By Failing To Complete The Required Assessment Work, The Claims Again Became Subject To Forfeiture By Relocation.

Stewart resumed the assessment work on the eight Horne claims on October 6, 1979, and on that day had $200.00 worth of trenching work done. No further work was done on the claims by Stewart until March 10, 1980, when an additional $49.00 worth of trenching work was done. TP 88,89.90. In fact, Stewart did not return to visit the claims for about two weeks after the October 6 work was done, and that visit was not for the purpose of doing assessment work. TP 49,50.

Whether or not a sufficient amount of assessment work has been performed, depends upon the value of the work and not the amount paid for it. Wagner v. Dorris, 73 P 318 (Ore. 1903). However, the amount so paid is admissible as evidence tending to establish the value of the work. If equipment is used in the performance of the assessment work, the reasonable value of the use of such equipment may be included as assessment

work. Anderson v. Robinson, 126 P 988 (Ore. 1912). Stewart did not offer testimony or other evidence as how the $200.00 paid for the backhoe trenching work done on October 6, would have any greater value than what was paid for it. Since the backhoe work was done at the customary and usual rate charged in the area at that time, the reasonable value for its use can only be the same as the $200.00 paid for it. It should be noted that it would require a minimum of $800.00 worth of assessment work to satisfy the commitment for the eight Horne claims.

4. Cattany's Locations of the Eight Rocky Claims on October 18, 1979, Caused the Forfeiture of Stewart's Eight Horne Claims, and Subject to the Validity of the Rocky Claims Locations, the Horne Claims Became a Nullity.

If, after resuming his assessment work, the locator, without cause or excuse, interrupts or stops the work on his claim for a period of time which would be contrary to a finding of due diligence, the claim becomes subject to forfeiture by relocation. When that happens, and a subsequent locator comes in and completes a relocation, which is not void for any reason, the former locator's rights to his mining claim are forfeited and lost and his mining claim ceases to exist. At this point, the subsequent locator has all the rights afforded the owner of a valid mining claim, as against all the world, including any former locators. The uncontradicted evidence showed that Cattany took all the required steps in perfecting the locations of the eight Rocky claims and the amendments thereof, including making discoveries. TP 70,71,72,73, 74.

5. The Clerical Errors in Cattany's Location Notices Did Not Void the Locations, as They Were Corrected by Amendment.

A location notice which is merely defective or erroneous, is not

void since it is capable of amendment, Nylund v. Ward, 187 P 154 (Colo. 1919), and actual knowledge of the error and the location of the claim on the ground is equal to valid recorded notice, Atherly v. Bullion Monarch Uranium Co., 335 P2d 71 (Utah 1959). Stewart admitted having knowledge of the error and of the actual locations on the ground. TP 64. Defects or errors in a location notice do not result in a forfeiture, and no forfeiture will occur if the defects are corrected prior to the date of a subsequent location. Smart v. Staunton, 20 Ariz 1, 239 P2d 514 (Ariz. 1925). Stewart was not a subsequent locator. ARS 27-202C. provides "The notice may be amended at any time and the monument changed to correspond with the amended location, but no change shall be made which will interfere with the rights of others. If such amendment changes the exterior boundaries of the claim, a new or amended map, plat or sketch shall be recorded pursuant to ARS 27-203 showing such change." (1978 amendment).

Stewart lost any rights it had in the eight Horne mining claims on October 18, 1979, when Cattany located the eight Rocky claims, and if not then, no later than January 16, 1980, when he filed and recorded the location notices. Therefore, Stewart had no rights that could be interferred with by reason of Cattany's amended location notices.

6. The Location of the Rocky Claims Having Widths of 660 Feet Rather Than the Designated Maximum Width of 600 Feet, Does Not Make the Locations Void, as They Only Contain the Maximum Allowable Area of 20 Acres and Can be Amended.

The location notices of the Rocky claims described them to be 660 feet wide and 1320 feet long, but contained the same area (20 acres) as that of a maximum size claim of 600 feet wide and 1500 feet long.

A mining claim which exceeds 600 feet in width is not void, but the excess area it contains, if any, may be voided. The rule is well

established that an area located in excess of that allowed by statute is only void as to the excess and will not, per se, void the location. Hayden Hill Con. Min. Co. v. Lincoln Min. Co., 160 P2d 468 (Ida. 1945). In Vallasco v. Mallory, 5 Ariz App 406, 427 P2d 540 (Ariz. 1967) the court held that until the locator of an oversize claim has a reasonable time, after notice, to draw in his lines, his right of possession extends to the entire claim.

So long as Cattany's claims are not void by reason of their oversize widths, Stewart, having no rights based on its eight Horne claims, and not being a subsequent locator whose rights might be interferred with, has no standing to complain of the oversize widths of Cattany's claims.

CONCLUSIONS

Based upon the evidence and the law presented and available at the trial of this case, and set forth herein, Appellants pray that the judgment entered below in favor of Appellees be reversed and judgment be granted in favor of the Appellants, finding Appellees guilty of forcible detainer and finding Appellants entitled to the possessory rights in and to the premises described as Rockys #1 through #8, as located and situated in the Northeast Quarter of Section 20, T20S, R22E, G.S.R.B.&M. Tombstone Mining District of Cochise County, Arizona, and further finding that Appellees have no possessory rights in said premises by reason of the Horne mining claims #110 through #117 , and granting Appellants their costs expended herein and in the court below.

Respectfully submitted,

by Robert E Cattany

Robert E. Cattany
4530 E. River Road
Tucson, Arizona 85718
Attorney for Appellants

Two copies of the foregoing Appellant's Opening Brief mailed this 10th day of May, 1982, to:

Arthur C. Atonna, Esq.
Greenwood, Ryan, Herbolich & Atonna, Ltd.
855 Douglas Avenue
Douglas, Arizona 85607
Attorneys for Appellees

— AFFIDAVIT —

I think Chaps? not currently on B.L.M lists. 386

I JAMES DeGROOD, ~~SAW~~
SAW MR WILLIAM LINDSEY STAKING MINING CORNER LOCATION POSTS ON THE DAY OF 8-7-80, THE DAY AFTER MR ROGER SMITH INFORMED ME THAT MR LINDSEY HAD FILED CLAIM FOR THE MINERAL LANDS PREVIOUSLY MENTIONED. I FURTHER STATE THAT NONE OF THE CLAIM POSTS I SAW HAD LOCATION NOTICES ON THEM, AND THEY DID NOT APPEAR TO CONFORM TO THE RECORDED LOCATION DESCRIPTIONS.

James DeGrood
LOVSTROM & ASSOC. TUCSON
5512 E. COPPER ST TUCSON 85712
8-8-80

WITNESSES TO THIS STATEMENT.

Olive N. Spurt
6241 N 10th place
Phoenix Ariz 85014

John D. Stutt
6841 N 10 Pl
Phx AZ
85014

I SWEAR THAT I ALSO DID PERSONALLY WITNESS THIS AFFIDAVIT

387

Aug. 8, 1980
DATE

Roger P. Smith
ROGER P. SMITH

Subscribed and sworn to before me this 8th day of August, 1980, by Roger P. Smith, known to me to be the above signed person.

Judith M. Costello
NOTARY PUBLIC

My Commission Expires: My Commission Expires Aug. 11, 1982

COCHISE COUNTY RECORDER 1881

$3.00 James Stewart Co. phoenix, Ariz.

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DKT. 1441 PAGE 314

AUGUST 1, 1980 Raymond F. Smith

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Subscribed and sworn to before me this 1st day of August 19 80.

NOTARY PUBLIC

My commission expires:

DKT. 1441 PAGE 142

- AFFIDAVIT -

TODAY, AFTER VISITING THE COCHISE COUNTY COURTHOUSE IN BISBEE, ARIZONA, I HAD AN OCCASSION TO TALK WITH WILLIAM E. LINDSEY, REGARDING HIS FILING OF FEDERAL LODE CLAIMS IN SECTIONS 5 & 6 IN TOWNSHIP 21 SOUTH, RANGE 22 EAST, G & SRM, ARIZONA. I MADE THE STATEMENT TO HIM THAT MYSELF, OTTIS LUNT, & DOUG LUNT, & A SURVEYOR HAD NOTICED ON AUGUST 5TH & 6TH THAT MANY OF THE LOCATION MARKERS MENTIONED IN HIS FILING WERE NOT WHERE THEY WERE SUPPOSED TO BE. I ALSO COMMENTED TO HIM THAT THE LOCATION NOTICES AT LODE LOCATIONS MUST BE CURRENT IN REGARDS TO HIS FILING OF AUGUST 5TH & 6TH 1980. HE MENTIONED THAT HE HAD ~~DONE IT~~ POSTED LOCATION NOTICES ABOUT 8 TEN YEARS AGO AND THAT SHOULD BE GOOD ENOUGH.

THE NAMES ON HIS CLAIMS ARE CHAYO 1-15

DATED THIS 7TH DAY OF AUGUST, 1980. Roger P. Smith

STATE OF ARIZONA, } ss.
COUNTY OF COCHISE }

I HEREBY CERTIFY that the within instrument was filed and recorded at request of:
James Stewart Co.
Phoenix, Arizona

Witness my hand and Official Seal.
Christine Macnab Rhodes,
County Recorder

Fee $ $3.00

COCHISE Deputy

INDEXED | FILED | SLOTTED

Draft ..... Date AUG 7 '80 - 8 50 AM

Docket 1441 Page 141-142 No. 16277

DKT. 1441 PAGE 141

240

STATE OF ARIZONA, County of ______ ss.

I hereby certify that the within instrument was filed and recorded ______ 19 ___ at ______ M

In Docket No. ______ Page ______ at the request of ______

Witness my hand and official seal

______ County Recorder

By ______ Deputy Recorder

When recorded mail to

Fee No.

Indexed

Compared

Photostated

Fee $ ______

I R S $ ______

LOCATION NOTICE

This mining claim, the name of which is the Las Vegas #1

mining claim, was located by the undersigned Dustin Escapule and Bert Goodman on the 29th day of March 1973

This claim is 1,320 feet long and 600 feet wide, and the point of discovery is 20 feet from the easterly end and 1,300 feet from the westerly end of this claim.

The general course of this claim is from east to west

This claim is situated and located in the Tombstone Mining District, in Cochise County, State of Arizona, about five miles in a southwesterly direction from Tombstone

This claim is situated in Section 17 T. 20 . R. 22 E., G&SRM and the location monument at which this notice was posted bears approximately 1,975 feet approximately N 41° W from the SE Corner of said Section 17. The south sideline of this claim is common to the north sideline of Las Vegas #2; the east endline of this claim is common to the [illegible] #1; and the west endline of this claim is common to the [illegible]

Dated and posted on the ground the day and year first above written.

DUSTIN ESCAPULE

BERT GOODMAN

STATE OF ARIZONA

I HEREBY CERTIFY THAT THE WITHIN [illegible] WAS [illegible] Dustin Escapule Box 112 Tombstone

WITNESS MY HAND AND OFFICIAL SEAL

CHRISTINE MACNAB COUNTY RECORDER

$2.00

MAR 30 '73 -2 00 PM

DKT 847. PAGE 121 No. 9247

[illegible]

STATE OF ARIZONA, County of ____ ss. I hereby certify that the within instrument was filed and recorded ____ 19__ at ____ M. In Docket No. ____ Page ____ at the request of ____

Witness my hand and official seal

____ County Recorder

By ____ Deputy Recorder

When recorded mail to

Fee No.:
Indexed
Compared
Photostated
Fee $ ____
I. R. S. $ ____

LOCATION NOTICE

LODE MINING CLAIM

This mining claim, the name of which is the Las Vegas # 2

mining claim, was located by the undersigned Dustin Escapule and Bert Goodman on the 29th day of March 19 73

This claim is 1,320 feet long and 600 feet wide, and the point of discovery is 20 feet from the easterly end and 1,300 feet from the westerly end of this claim.

The general course of this claim is from east to west

This claim is situated and located in the Tombstone Mining District, in Cochise County, State of Arizona, about five miles in a southwesterly direction from Tombstone

This claim is situated in Section 17 T. 20 S., R. 22 E., G&SRM and the location monument at which this notice is posted bears approximately 1,585 feet approximately N 55° W from the southeasts Corner of said Section 17. The north sideline of this claim is common to the south sideline of LAS VEGAS #1; the south sideline of this claim is common to the north sideline of LAS VEGAS #3; the east endline of this claim is common to the west endline of ERNEST EDWARD #2; and the west endline of this claim is common to the east endline of FOX# 18.

Dated and posted on the ground the day and year first above written.

DUSTIN ESCAPULE

BERT GOODMAN

STATE OF ARIZONA, I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED ... OF Dusty Escapule Tombstone, Az.

WITNESS MY HAND AND OFFICIAL SEAL ... RECORDER

$2.00

MAR 30 '73 -2 00 PM

DKT 847 PAGE 152 NO. 9248

847 PAGE 152

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STATE OF ARIZONA, County of ______ } ss.	I hereby certify that the within instrument was filed and recorded ______ 19__ at ______ M in Docket No. ______ Page ______ at the request of ______ Witness my hand and official seal ______ County Recorder By ______ Deputy Recorder	Fee No. Indexed Compared Photostated Fee $ ______ I. R. S. $ ______

When recorded mail to

LOCATION NOTICE

LODE MINING CLAIM

This mining claim, the name of which is the Las Vegas #3 mining claim, was located by the undersigned Dustin Escapule and Bert Goodman on the 29th day of March 1973.

This claim is 1,320 feet long and 600 feet wide, and the point of discovery is 20 feet from the easterly end and 1,300 feet from the westerly end of this claim.

The general course of this claim is from east to west

This claim is situated and located in the Tombstone Mining District, in Cochise County, State of Arizona, about five miles in a southwesterly direction from Tombstone

This claim is situated in Section 17 T.20 S., R. 22 E., G&SRM and the location monument at which this notice is posted bears approximately 1,325 feet approximately N 76½° W from the southeast corner of said Section 17. The north sideline of this claim is common to the south sideline of LAS VEGAS #2; the east endline of this claim is common to the west endline of ERNEST EDWARD #3; and the west endline of this claim is common to the east endline of FOX #19.

Dated and posted on the ground the day and year first above written.

[signature]

DUSTIN ESCAPULE

[signature]

BERT GOODMAN

STATE OF ARIZONA } ss.

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED AND RECORDED

Dusty Escapule
Tombstone, Az.

$2.00

MAR 30 1973 -2 00 PM

DOCKET 547 PAGE 153 No. 9249

WITNESS MY HAND AND OFFICIAL SEAL
COCHISE COUNTY RECORDER

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