8 S.Ct. 850
Supreme Court of the United States

UNITED STATES
v.
SAN JACINTO TIN CO. *et al.* [1]

[1] Affirming 23 Fed. Rep. 279.

March 19, 1888.

Synopsis
(*Syllabus by the Court.*)

Appeal from the Circuit Court of the United States for the District of California

West Headnotes (5)

[1] **Attorney General** Bringing and Prosecution of Actions
Attorney General Actions and Other Proceedings
Public Lands Parties

The initiation and control of a suit in the name of the United States to annul a patent for land lies with the attorney general, as head of an executive department.

44 Cases that cite this headnote

[2] **Public Lands** Right of Action and Defenses in General

A suit may be brought by the United States to annul a patent issued in its name, obtained by fraud or mistake; but the right exists only when the government has an interest in the remedy sought by reason of its interest in the land, or the fraud has been practiced on the government and operates to its prejudice, or it is under obligation to some individual to make his title good by setting aside the patent, or the duty of the government to the public requires it.

61 Cases that cite this headnote

[3] **Public Lands** Right of Action and Defenses in General

When it is apparent that the only purpose of bringing the suit is to benefit one of two claimants to the land, and the government has no interest in the matter, the suit must fail.

8 Cases that cite this headnote

[4] **Public Lands** Fraud, Perjury, or Mistake in General

In the Maxwell Land-Grant Case, 121 U.S. 325, 7 Sup.Ct.Rep. 1015, we expressed ourselves fully in regard to the testimony necessary to enable a court of chancery to set aside such a solemn instrument as a patent of the United States. It was there said "that when, in a court of equity, it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt." There is no such convincing evidence of fraud in the present case.

30 Cases that cite this headnote

[5] **Public Lands** Patent in Confirmation of Grant

In a suit to cancel a patent for a confirmed Mexican grant, it was alleged that, at the time the survey was made, the commissioner of the general land office, the surveyor general for California, the chief clerk of the latter's office, and the deputy who made the survey were interested in the ownership of the grant, and by fraud made a false location of the land to make it contain valuable ores of tin not within its limits if fairly surveyed; but it appeared that none of the officers named had any interest whatever in the grant at the time of the survey except C., the chief clerk in the surveyor general's office, and that he

had not in any way influenced the location of the survey, as shown by the testimony of all those who took part in making it; and that the survey was contested at every step by interested parties, and was twice before the surveyor general, and twice before the commission in Washington, and finally decided after six months' consideration by the secretary of the interior, confirming the decision of the land office. *Held,* that the fact of fraud was not established, though it further appeared that some of these officers, after the patent was issued, took shares in a joint-stock corporation organized to work the mine, but there was no proof that the shares were a voluntary gift, or were for services rendered in locating the survey; and the fairness of the purchase of these shares after the patent issued was sustained by affirmative testimony.

9 Cases that cite this headnote

Attorneys and Law Firms

****851** ***274** *G. Wiley Wells* and *Sol. Gen. Jenks*, for appellant.

Wm. M. Stewart, for appellees.

Opinion

MILLER, J.

The suit in this case, which was a bill in chancery filed April 10, 1883, in the circuit court for the district of California, purports to be brought by the attorney general on behalf of the United States against the San Jacinto Tin Company, the Riverside Canal Company, and the Riverside Land & Irrigating Company. These corporations are alleged to be in possession of a large body of land, nearly 11 square leagues in extent, for which a patent was issued by the United States on the 26th day of October, 1867, to Maria del Rosario Estudillo de Aguirre, and her heirs and assigns. The object of the bill is to set aside this patent, and have it declared void ***275** upon the ground that the land described in the survey, which description is a part of the patent, is not the land granted by the Mexican government to said Maria, nor that which was confirmed to her under the proceedings before the land commission, and by the judgment of the district court of the United States, and by this court also on appeal. The essential feature of the grievance relied on by the complainant is that this survey was thus located by fraud to include different and more valuable land than that granted by Mexico, and confirmed by the courts, and on account of this fraud it is prayed that the survey and patent be set aside and annulled. Perhaps the nature of this proceeding cannot be better stated than in the language that heads the brief or printed argument of the appellant, who was plaintiff below. It is as follows: 'This ****852** brief is intended to establish the following general proposition, viz.: That the lands hereinafter described as patented to Maria del Rosario de Aguirre, and her heirs and assigns, on the 26th day of October, 1867, were obtained from the United States by a fraudulent survey of the lands described therein in violation of the decree of the court; and that the persons engaged in said fraudulent survey were the beneficiaries thereof; and that, by reason thereof, said patent to the same is void, and should be set aside, vacated, and annulled.' The case was heard in the circuit court on the bill, answer, replication, and voluminous testimony, by the circuit and district judges sitting together, who concurred in the decree dismissing the bill. The bill sets out a grant to one Maria del Rosario Estudillo de Aguirre of the surplus or '*sobrante*' of the *ranchos* of San Jacinto Viejo y Nuevo, or the overplus which remains in the *ranchos* of Old and New San Jacinto; the survey thereof to commence from the boundaries of Don Jose Antonio Estudillo and Don Miguel Pedrorena. It alleges that this grant was afterwards confirmed by the district court of California on appeal from the land commission. Upon an appeal taken from that court to the supreme court of the United States, its judgment was affirmed. The decision of the land commission ***276** was to the effect that the claimant was entitled to five square leagues of land within this *sobrante* or surplus. The district court, however, held that the claimant was entitled to eleven square leagues, if so much should be found within the *sobrante*, and to all that was found therein if it were less than that amount. The language of this decree, as set forth in the body of the bill, and affirmed by the supreme court of the United States at its December term, 1863, (*U. S.* v. *D'Aguirre*, 1 Wall. 311,) describes the land confirmed as 'the *sobrante* or surplus lands remaining within the boundaries of the tract of land called 'San Jacinto,' as the same are represented and described in the map of said tract contained in the *expediente* of Miguel Pedrorena filed in this case, and referred to in the grant, over and above certain lands granted to Jose Antonio Estudillo, and certain other lands granted to Miguel Pedrorena, within the aforesaid boundaries, to the extent of eleven square leagues of land; and, if said *sobrante* or surplus within said boundaries should be less than eleven square leagues, then such less quantity.' The bill alleges that

the location by survey of the lands confirmed by this decree was not at all within the *sobrante* of the San Jacinto grant, but that it was located upon other lands than those on which it should have been, because those which were embraced by the survey were valuable as containing ores of tin; and that nearly all the officers engaged in making or establishing it, from and including the commissioner of the general land-office down to the deputy-surveyors, were interested in the claim at the time.

It is alleged that throughout the whole transaction, from the beginning of the effort to have this survey made until its final completion and the issue of the patent, all the proceedings were dictated by fraud, and all the officers of the government below the secretary of the interior who had anything to do with it were parties to that fraud, and to be benefited by it. The principal points upon which this fraud is said to rest are that the land survey was not within the larger exterior boundaries out of which the *sobrantc* of San Jacinto Viejo y Nuevo was to be taken, but that said survey described a tract ***277** of land of about the same extent, to-wit, of about eleven square leagues, situated more than six miles at the nearest point, and more than twenty miles at the furthest point, away from the land in fact granted and conceded by Pio Pico, governor, to the grantee; that the survey of said land was never made in the field, nor from any actual measurements of distances or observation or determination of courses in the field, as the law of the land department required, nor according to the directions of the decree confirming said grant; that the plat and survey were made arbitrarily, and without any actual *data* in the office of the surveyor-general of the United States for California, under the direction and dictation ****853** of that officer and one Edward Conway, then chief clerk in charge of that office, and performing the duties of surveyor general, and by one George H. Thompson, a deputy-surveyor acting under the surveyor general and the chief clerk; that it was so made up without any reference to the *expediente* that accompanied the grant or juridical possession given at the time of the grant, or to the decree, but that it was made solely with reference to securing, surreptitiously and fraudulently, letters patent for the land included and described within the said survey and plat, although the same lies outside of the boundaries of the tract called 'San Jacinto;' that the land so surveyed and platted was at that time supposed by said surveyor general and Edward Conway to contain, and did in fact contain, valuable lodes of tin and other mineral ores, and that all this was well known to the defendant, or to persons composing its stockholders, at the time the patent was issued. It is further alleged that Upson, the surveyor general, Conway, the chief clerk in his office, and Thompson, the deputy who was directed to make the survey and did make the plat, and Joseph H. Wilson, the commissioner of the general land-office at Washington, were all interested in and part owners of the claim at the time this survey was made, and at the very time they acted in reference to its final confirmation. Other persons are also said to be inclupated in this fraudulent proceeding, whose names it is not necessary at present to mention. ***278** It will thus be seen that the entire foundation for the relief sought in this case rests upon a fraud alleged to have been committed upon the government by its own officers, they being interested in the claim to be surveyed and patented. There is no pretense of any mere mistake in the matter, but, on the contrary, it is asserted that the parties knew exactly what they were doing, and that it was intended to cheat the United States out of valuable mineral ores for the benefit and advantage of those parties and their confederates. The issue is thus narrowed exclusively to the question of fraud.

Another question, however, is raised by counsel for the defendant, which is earnestly insisted upon by them, and which received the serious consideration of the judges in the circuit court; namely, the right of the attorney general of the United States to institute this suit. The question as presented is one surrounded by some embarrassment; but as it is, in some form or other, of frequent recurrence recently, and, if decided in favor of the appellees, will require the dismissal of the case without a judgment by this court upon its merits, we feel called upon to give the matter our attention. It is denied that the attorney general has any general authority under the constitution and laws of the United States to commence a suit in the name of the United States to set aside a patent, or other solemn instrument issued by proper authority. It is quite true that the Revised Statutes, in the title which establishes and regulates the department of justice, simply declares, in section 346, that 'there shall be at the seat of government an executive department, to be known as the 'Department of Justice,' and an attorney general, who shall be the head thereof.' There is no very specific statement of the general duties of the attorney general, but it is seen from the whole chapter referred to that he has the authority, and it is made his duty, to supervise the conduct of all suits brought by or against the United States, and to give advice to the president and the heads of the other departments of the government. There is no express authority vested in him to authorize suits to be brought against the debtors of the government, ***279** or upon bonds, or to begin criminal prosecutions, or to institute proceedings in any of the numerous cases in which the United States is plaintiff; and yet he is invested with the general superintendence of all such suits, and all the district attorneys who do bring them in the various courts in the country are placed under

his immediate direction and control. And, notwithstanding the want of any specific authority to bring an action in the name of the United States to set aside and declare void an instrument issued under its apparent authority, we cannot believe that where a case exists in **854 which this ought to be done it is not within the authority of that officer to cause such action to be instituted and prosecuted. He is undoubtedly the officer who has charge of the institution and conduct of the pleas of the United States, and of the litigation which is necessary to establish the rights of the government. If the United States, in any particular case, has a just cause for calling upon the judiciary of the country, in any of its courts, for relief by setting aside or annulling any of its contracts, its obligations, or its most solemn instruments, the question of the appeal to the judicial tribunals of the country must primarily be decided by the attorney general of the United States. That such a power should exist somewhere, and that the United States should not be more helpless in relieving itself from frauds, impostures, and deceptions than the private individual, is hardly open to argument. The constitution itself declares that the judicial power shall extend to all cases to which the United States shall be a party; and that this means mainly where it is a party plaintiff is a necessary result of the well-established proposition that it cannot be sued in any court without its consent. There must, then, be an officer or officers of the government to determine when the United States shall sue, to decide for what it shall sue, and to be reponsible that such suits shall be brought in appropriate cases. The attorneys of the United States in every judicial district are officers of this character, and they are by statute under the immediate supervision and control of the attorney general. How, then, can it be argued that if the United States has been deceived, entrapped, *280 or defrauded into the making, under the forms of law, of an instrument which injuriously affects its rights of property, or other rights, it cannot bring a suit to avoid the effect of such instrument, thus fraudulently obtained, without a special act of congress in each case, or without some special authority applicable to this class of cases, while all other just grounds of suing in a court of justice concededly belong to the department of justice, and are in use every day? The judiciary act of 1789, in its third section, which first created the office of attorney general, without any very accurate definitions of his powers, in using the words that 'there shall be appointed a meet person, learned in the law, to act as attorney general for the United States,' (1 U. S. St. at Large, 93,) must have had reference to the similar office with the same designation existing under the English law; and, though it has been said that there is no common law of the United States, it is still quite true that when acts of congress use words which are familiar in the law of England, they are supposed to be used with reference to their meaning in that law. In all this, however, the attorney general acts as the head of one of the executive departments, representing the authority of the president in the class of subjects within the domain of that department, and under his control.

In the case of *U. S.* v. *Hughes*, 11 How. 552, one Godbee had entered and paid for land at the United States land-office in New Orleans, but had not taken out his patent. Hughes, well knowing this fact, entered, paid for, and received a patent for the same land, the prior entry of Godbee being overlooked by the land-officers. The United States having tendered Hughes his purchase money, the attorney general filed an information on behalf of the United States to repeal the patent. The defendant, Hughes, demurred, on the ground that no authority existed for bringing such a suit; but this court, saying that 'it cannot be conceived why the government should stand on a different footing from any other proprietor,' overruled the demurrer. When the case afterwards came into this court on appeal from the decree on the final hearing, it said: 'It was the plain duty of the United *281 States to seek to vacate and annul the instrument, to the end that their previous engagement might be fulfilled by the transfer of a clear title, the only one intended for the purchaser by the act of congress.' 4 Wall. 236. In *U. S.* v. *Stone*, 2 Wall. 525, Mr. Justice GRIER, delivering the opinion of the court, said: 'A patent is the highest evidence of title, and is conclusive as against the government, and all **855 claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal. In England this was originally done by *scire facias*, but a bill in chancery is found a more convenient remedy.' In the case of *Mowry* v. *Whitney*, 14 Wall. 440, which was an attempt by a private party to set aside by a bill in chancery a patent for an invention, the court considered the subject rather fully, and said that 'the ancient method of doing this in the English courts was by *scire facias*, and three classes of cases are laid down in which this may be done.' The court held that in England 'the *scire facias* to repeal a patent was brought in chancery where the patent was of record; and though, in this country, the writ of *scire facias* is not in use as a chancery proceeding, the nature of the chancery jurisdiction, and its mode of proceeding, have established it as the appropriate tribunal for the annulling of a grant or patent from the government;' referring to *U. S.* v. *Stone*, above cited. The court denied the right of the private party to sustain a suit to annul the patent, and said: 'The general public is left to the protection of the government and its officers. * * * The reasons for requiring official authority for such a proceeding are obvious. The fraud, if one exists, has been

practiced on the government, and, as the party injured, it is the appropriate party to assert the remedy or seek relied.' In *U. S.* v. *Throckmorton*, 98 U. S. 70, the court said: 'In the class of cases to which this belongs, however, the practice of the English and the American courts has been to require the name of the attorney general as indorsing the suit before it will be entertained. The reason of this is obvious; namely, that, in so important a matter as impeaching the ***282** grants of the government under its seal, its highest law-officer should be consulted, and should give the support of his name and authority to the suit. He should also have control of it in every stage, so that if, at any time during its progress, he should become convinced that the proceeding is not well founded, or is oppressive, he may dismiss the bill.' In *moore* v. *Robbins*, 96 U. S. 533, the court, speaking of the issuing of patents for land by the government, said: 'If a fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals; and, if the government is the party injured, this is the proper course.'

While the cases last cited did not involve directly the power of the attorney general to institute a suit to set aside a patent of the United States, we have had before us quite recently three cases which did involve that power, brought by the United States for the express purpose of setting aside patents for land issued by the government on the ground of frauds or mistakes in their issue. In the first of these, (*Moffat* v. *U. S.*, 112 U. S. 24, 5 Sup. Ct. Rep. 10,) which was prosecuted by the attorney general, who appeared in this court by the assistant attorney general to argue the case, the decree of the circuit court setting aside the patent, as having been obtained by the fraud of the officers of the land department, was affirmed. No question was made of the right of the attorney general to institute the suit, and conduct it to a successful termination. In the second case (*U. S.* v. *Minor*, 114 U. S. 241, 5 Sup. Ct. Rep. 836) a suit was brought in the circuit court for the district of California to set aside a patent for land issued by the government to Minor. The bill alleged that the patent was obtained by the fraud of Minor in making false affidavits, and procuring others to be made, before the officers of the land department, by which he obtained a patent for the land in question. Although the case was certified here by the judges sitting in that court on a division of opinion upon several points, one of which was whether a demurrer to the amended bill should be sustained, no question seems to have been made of the right ***283** of the government, by its attorney general, to institute this suit; the appeal on behalf of the United States being argued by the solicitor general, an officer under the control of the attorney general. Some question was, ****856** however, made in the opinion in that case in regard to the right of the attorney general to bring such a suit, where the only result would have been to take the land from Minor, and give it to one Spence, who had a claim upon part of it; the court saying that 'the government, in that case, would certainly have no interest in the land when recovered, as it must go to Spence without any further compensation. And it may become a grave question, in some future case of this character, how far the officers of the government can be permitted, when it has no interest in the property or in the subject of the litigation, to use its name to set aside its own patent, for which it has received full compensation, for the benefit of a rival claimant.' The court said, however, that the question did not arise in that case, because Spence only had a claim to one-half of the land covered by the patent. It will be seen that the only question thus suggested did not affect the right of the attorney general, in a proper case, to institute and carry on such a suit; and the decree of the circuit court was reversed, on the ground that the case presented was one which justified relief. In the still later case of *Iron Co.* v. *U. S.*, 123 U. S. 307, 8 Sup. Ct. Rep. 131, the bill was filed in the name of the United States by the attorney general to declare void and cancel 61 patents for as many distinct pieces of land, situated at different places in Las Animas county, in the state of Colorado, amounting in the aggregate to over 9,000 acres. The allegation in that case was that the patent had been obtained by the fraudulent use of fictitious names as grantees of the land, and the case was fought through with great vigor on both sides. It was thoroughly and elaborately considered; and the court said, in regard to these transactions, that they 'undoubtedly constituted a fraud upon the United States sufficient in equity as against the parties perpetrating it, or those claiming under them with notice of ***284** it, to justify the cancellation of the patents issued to them;' quoting the following language from *U. S.* v. *Minor*, above cited: 'Where the patent is the result of nothing but fraud and perjury, it is enough to hold that it conveys the legal title; and it would be going quite too far to say that it cannot be assailed by a proceeding in equity, and set aside as void, if the fraud is proved, and there are no innocent holders for value.' If the court had entertained the opinion in these cases that there existed in the attorney general no right to institute these suits to set aside patents for lands obtained by fraud, it would have been saved the labor of a protracted investigation in each of them into the facts which were supposed to constitute the fraud; and in the two cases first mentioned the court violated its duty in sustaining the government, and setting aside the patents, if there existed in its judgment no right in the attorney

general to institute such suits. We are not insensible to the enormous power, and its capacity for evil, thus reposed in that department of the government. Since the title to all of the land in more than half of the states and territories of the Union depends upon patents from the government of the United States, it is to be seen what a vast power is confided to the officer who may order the institution of suits to set aside every one of these patents; and if the doctrine that the United States in bringing such actions is not controlled by any statute of limitations, or governed by the rule concerning laches, be sound, of which we express no opinion at present, then the evil which may result would seem to be endless, as well as enormous. But it has often been said that the fact that the exercise of power may be abused is no sufficient reason for denying its existence, and, if restrictions are to be placed upon the exercise of this authority by the attorney general, it is for the legislative body which created the office to enact them. We do not think, therefore, that it can be successfully denied that there exists in the attorney general, as the head of the department of justice, the right to institute, in the name of the United States, a suit to abrogate, annul, or set aside a patent for land which has been issued by the government in a ***285** case where such an instrument, if permitted to stand, would work serious injury to the United States, and prejudice ****857** its interests, and where it has been obtained by fraud, imposture, or mistake.

One of the difficulties attending the present case, and others of like character which have come before us, in which the authority of the attorney general to institute the suit has been questioned, is that no specific plea has been filed denying this authority, or alleging that the suit as made by the bill, or established by the evidence, does not come within the class of cases in which that officer can exercise this power. There is no plea in this case, and all that is said upon this subject in the answer is in the following language: 'If said officers [meaning the president, the secretary of the interior, and the commissioner of the general land-office, who were such at the time this action was begun] had consulted the records, they would have been easily informed of the truth; but the said attorney general is now informed and moved and instigated by the same parties who made the contest in the land department before the issuing of the said patent, and M. G. Cobb, the same attorney who drew the bill herein, and instigated the suit, and conducts the same, was the attorney of said contestants in said proceedings, and has represented said parties as such attorney and counsel from the filing of said objections by said Stearns and Montalva down to the present time.' But we are of opinion that since the right of the government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the government must show that, like the private individual, it has such an interest in the relief sought as entitles it to move in the matter. If it be a question of property, a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud which would render the instrument void, the fraud must operate to the ***286** prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefited to sustain an action for his use,-in short, if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an action than any private person could under similar circumstances. In all the decisions to which we have just referred it is either expressed or implied that this interest or duty of the United States must exist as the foundation of the right of action. Of course, this interest must be made to appear in the progress of the proceedings, either by pleading or evidence; and if there is a want of it, and the fact is manifest that the suit has actually been brought for the benefit of some third person, and that no obligation to the general public exists which requires the United States to bring it, then the suit must fail. In the case before us the bill itself leaves a fair implication that, if this patent is set aside, the title to the property will revert to the United States, together with the beneficial interest in it. It is argued in the brief that this is not true; that in fact the government is but the instrument of one Baker, who married the widow of Abel Stearns; and that Stearns contested the correctness of this survey with others before the land department very actively and energetically, because he had such an interest in the land covered by it that, if it was defeated, he would become the equitable or beneficial owner of the land. This view is supported by some pretty strong testimony, and by the fact that Baker was the man at whose instance the action was begun. When the attorney general required that a bond should be given to save the United States harmless with regard to the costs of these proceedings, Baker was the man who furnished the security, and signed the bond himself. The condition inserted in that obligation recited 'that whereas the attorney general of the United States of America has this day filed, at the request of the above-named ****858** R. S. Baker, a bill in equity in ***287** the name of and on behalf of the United States of America against the San Jacinto Tin Company, * * * now,

therefore, if the said Baker shall well and truly save the United States of America harmless from all costs and expenses which may be incurred by or against them in the prosecution of said suit to its final determination, and pay or cause to be paid on demand all such costs and expenses as may necessarily be incurred in such prosecution, then this obligation to be void.' Taking all these circumstances together, it raises a very strong implication that Baker expected that, if the patent was set aside, his right to the land covered by it, or to a large part of it, would become paramount. But we are not so entirely satisfied of the want of interest fo the United States in the whole or a part of the land which is covered by this patent as to justify us in saying that the bill in the present case ought to be dismissed on that ground.

Coming to the merits of the case, which turn exclusively on the question of fraud in the location of the survey of the grant to the original claimant, we are to observe that the issue is by the pleadings themselves, as well as by the explicit statement of counsel for appellant, limited to actual fraud in the execution of that survey. There is no denial of the validity of the original grant, nor of its confirmation by the land commission, as well as on appeal by the district court of the United States for California and by this court. The justice of a claim for 11 square leagues of land within the surplus, technically called '*sobrante*,' of the San Jacinto tract, is not questioned; nor does the decree which is to be carried out by this survey limit the location of the land otherwise than that it shall not be more than 11 leagues, and that it shall be within the out-boundaries of this surplus. There is a statement in the decree that the measurement of the land thereby confirmed is to be commenced from the line of the Estudillo grant as fixed by the act of judicial possession to him, to which reference is made. We consider this last description as nothing more than a statement that the land of Estudillo previously granted within the boundaries of the tract called 'San Jacinto' shall be one of the boundaries of the ***288** claim thus confirmed, and that the survey must not cover the grant to Estudillo. Reference is also made to map contained in the *expediente* among the papers before the court. The question presented would naturally divide itself into two parts, if there had been any allegation of an unintentional or accidental mistake in the location of the grant; but the plaintiffs in this case place themselves outside of the benefit of this claim of mistake, except as it may be so gross as to aid the belief of an intentional fraud on the part of those who made it. The main issue, therefore, in the case, is on the question of actual fraud committed by those who made and established the survey. The principal foundation on which this fraud is rested by counsel is that all the officers of the government below the secretary of the interior who had anything to do with the making, considering, confirming, or ratifying of this survey were interested in the claim; that the motive of the fraud was to include within the survey certain lands which were then known to contain mineral ores, believed to be immensely valuable; and that for this purpose the survey was distorted and wrenched from its proper place in order to cover these mineral deposits. As will be shown hereafter most of the persons charged with having such interest, and with being in position to influence the location of the land by the surveyor, never had any interest in it at all until after the survey was made and confirmed, and the patent issued to the claimant. If this be true, of course they were under no temptation to do wrong, and the fraudulent motive attributed to them could have had no existence.

Mr. Edward Conway, who had previously bought the property and received the conveyance of the title from the claimant before the patent issued, asserts in his testimony that at the time the survey was made and was pending before the land-office he was the only owner of the property, and that no one had any interest, equitable or otherwise, in it but himself. After this he organized ****859** a corporation, to which the title of the property was conveyed, which undertook to work the tin mines found upon it, and most of these persons so ***289** liberally charged with fraud in the survey are those who became stockholders therein. The main instrument of this fraud, according to the theory of plaintiff's counsel, was Conway, who, it is charged, owned the whole or at least the predominating interest in the grant at the time the survey was made. At that time he was chief clerk in the office of the surveyor general of the United States for California, and during the period when it was under consideration therein, as well as in the general land-office, and before the secretary of the interior. It is charged that he was often the acting surveyor general, and that this survey was made under his control and direction whwhile he was thus interested as owner of the claim. It is also charged that George H. Thompson, a deputy-surveyor, acting under the surveyor general and said Conway intrusted with the duty of making this particular survey, was also interested in the claim with Conway, as well as one Hancock, at some time a clerk in the surveyor general's office. It is asserted, further, that the survey was not actually made upon the ground, but, as a matter of fact, in the office of the surveyor general by said Conway, Thompson, and Hancock, solely for the purpose of surreptitiously securing letters patent upon the land described and included in the survey and plat, the motive in mislocating said land being that these parties believed that the land so surveyed contained valuable lodes of tin and other mineral ores. The deposition of Conway was

taken during the progress of the suit. He was then 60 years old. He states in that deposition that at the time it was given he had no interest whatever in the San Jacinto Tin Company, or in the lands which were the subject of controversy; the he had long since parted with his shares in the stock of that company, some of which were sold for assessments which he was unable to pay. He gives a history of his connection with the claim, and with the land-office during its pendency before it, and also states the connection that other parties sustained to this transaction who are asserted to have been interested in it during that time. It seems to be a fair and candid statement of all the ***290** facts about which he was interrogated. He contradicts himself nowhere during a long examination and cross-examination, and he is not anywhere successfully contradicted by other testimony in the case. He appears to have been sincerely anxious to tell the whole truth, and, if his statement is to be believed, he had no interest to do otherwise.

Mr. Conway states that during the years 1864, 1865, and 1866 he was chief clerk in the office of the United States surveyor general for Alifornia, in San Francisco; that he entered that office in the fall of 1857, resigned in December, 1866, and again entered it on January 1, 1868, and ermained there until December, 1869; his longest service being as chief clerk, although he commenced at a lower grade. He served under surveyors general Mandeville, Beale, and Upson, and during the entire terms of the two latter with the exception of the year stated. He testifies that the approval of surveys could only be made by the commissioner of the general land-office, who was furnished with the field-notes and plats which were certified to be correct by the surveyor general, who also made a report of his action for the approval or disapproval of that officer; that the first connection he had with the *sobrante* San Jacinto Viejo y Nuevo was in 1863; that he then told Surveyor General Beale that he wished to resign his place as chief clerk, as he had offers of other business, among which was one from Mr. Hancock, then a major in the army of the United States, who informed him that he had control of this *sobrante*, in also of the Rancho San Jacinto Nuevo,-that is, of the metals that were in those *ranchos*,-and he wished him to take charge of the business. Throughout the whole of this story the early connection of Hancock and Conway with the *sobrante* claim seems to have been under a right purchased by Hancock from Mrs. Aguirre of the mineral products thereof, without any claim to a ****860** general grant of the land. The witness Conway says that Surveyor General Beale told him, upon being informed of the above facts, that they constituted no objection to his remaining in the office, and that he did not wish to part with him. He says: 'I told him I felt a little delicacy about it, and he ***291** answered that he would look out for the interest of the United States. When Surveyor General Upson came into office, I informed him of the circumstances; that I was interested, not in the *rancho*, but in the veins of metals that were supposed to be there; told him that I wished to have nothing to do with the survey,-to have no connection with it,-and any reports he wished on the matter he must get from other officers. In April, 1866, the owner of the *sobrante* offered it for sale for $8,000. I think it was $3,000 cash, and $5,000 on time on a mortgage.' He then went on to state that he enlisted Mr. Charles Hosmer, who advanced him the money for the cash payment, and he (Conway) then agreed to hold in trust for him one-eighth of the estate, and repay him his advance out of the first proceeds; that the survey of the *sobrante* was made in 1864, at the request of the grantee, through her attorneys, Patterson & Stow, acting under the authority of Major Hancock; and in regard to this transaction he testifies as follows: 'Edward F. Beale was the surveyor general at the time, and he issued the instructions for the survey. The deputy who was directed to make the survey of the *sobrante* was George H. Thompson. Neither Surveyor General Beale nor Thompson had any interest, present or contingent, in the *sobrante* at that time, or any promise of any interest. I know positively that they had no interest, or promise of interest. Surveyor General Beale has never owned any interest in the *sobrante rancho*, nor ever owned any stock in the San Jacinto Tin Company, either by himself or in trust, or in any other manner. The survey was made by Thompson in Beale's time, and under his instructions.' It further appears from his testimony that, the survey having been forwarded to the department at Washington, it was there decided that the act of June 2, 1862, (12 U. S. St. at Large, 410,) under which the survey was made, did not apply to California, and it was returned to the office in San Francisco, with instructions-the act of July 1, 1864, (13 U. S. St. at Large, 332,) having been passed in the mean time-to have it advertised according to the provisions of that statute. By this act the survey, with its plat* ***292** and field-notes, were to be open for public inspection for ninety days after the expiration of the four consecutive weeks of publication which was provided for; then if objections were made to the survey within that time by any party claiming to have an interest in the tract embraced by it, or in any part thereof, they were to be reduced to writing, stating distinctly the interest of the objector, and signed by him or his attorney, and filed with the surveyor general, together with such affidavits or other proofs as he might produce in support of the objection; and at the expiration of said ninety days the surveyor general was bound to transmit to the commissioner of the general land-

office at Washington a copy of the survey and plat, with the objections and proofs filed in support of them, and also copies of any proofs produced by the claimant; all of which the commissioner was to examine into, and approve the survey, or return the same for correction. All this Conway testifies was done. He says: 'Exceptions were taken to the survey by Abel Stearns, the owner of the Sierra *rancho* on the north, and of the *rancho* that he claimed as the Temescal on the west. Surveyor General Upson ordered the survey reformed, in order to leave space on the north for the Sierra, according to the juridical possession, of one league in width from the Santa Ana River.' It all this the witness is confirmed by the records of lant-offices. The witness stated that he took no part whatever in these proceedings with reference to either survey, and, upon being asked if he exercised any control with respect to this *sobrante* claim or the survey thereof, said: 'I simply gave notice to the surveyors general, Beale and Upson, of my interest in this *rancho*, and after that I had nothing to do with it. The report was made by ****861** Mr. Hopkins, and I acted in the same manner as a judge would on the bench if he was interested in the case,-step down and out.' He also says that the instructions in regard to the mode of executing the survey came from the commissioner of the general land-office. The witness then proceeded to state the facts connected with his acquisition of this property, as follows: 'I made my first purchase of an interest in this *sobrante* on ***293** the 3d of April, 1866, the only purchase I made. * * * I purchased it from Manuel Ferrer and his wife, Maria del Rosario Estudillo de Aguirre. She was the original grantee of the *rancho*. Her husband joined with her in the deed. No person was interested with me in that purchase, either before or upon the receipt of the deed, except Mr. Hosmer, as I before stated. That was the only interest except my own. I had that deed recorded in the office of the county recorder of San Bernardino county on the 30th of April, 1866. From April 3, 1866, until April 30, 1866, I was in San Francisco. The deed was executed in San Diego and sent up to me, and I sent it down for record immediately. * * * In addition to myself and Mr. Hosmer, no person except Jeremiah S. Black and William H. Lowery, attorneys at law, of Washington, were interested in that *sobrante* subsequent to the date of that deed, April 3, 1866, and prior to the date of that patent.' This was the period during which the survey was pending in the office of the commissioner having charge of public lands, awaiting his approval, and witness says that during that period no interest in the *sobrante* was held in trust for any other person, to his knowledge, except those mentioned; that Black and Lowery were his attorneys in the case of the Rancho Sobrante San Jacinto before the commissioner of the general land-office, nad the secretary of the interior, and the consideration which they paid for the interest which he (Conway) held for them was their service as attorneys in the matters mentioned. He further says that he resigned his position in the surveyor general's office about December 10, 1866, and proceeded to Washington, returning in December, 1867. He then goes on to recount his acquaintance in that city with Joseph H. Wilson, commissioner of the general land-office, and several other persons mentioned, and to deny that either or any of them were interested with him in any manner whatever in the *sobrante*, by purchase or otherwise, directly or indirectly, before his return from Washington on that occasion. He proceeds to say, in the further history of the matter, that when he returned from Washington, in December, 1867, he thought it best to form a corporation for the ***294** purpose of working the ores in the mines, and offered interests to gentlemen whom he thought responsible, and calculated to further the joint interests of the corporation; that on the 3d day of January, 1868, the corporation was formed, and became the owner of the property; that it agreed to pay off the mortgage, assume the indebtedness to Hosmer, and pay him (Conway) $7,500, and allow him to retain a certain number of the shares of its stock, which he afterwards states to be about one-sixth of the sum at which it was capitalized; and that all this was done.

Mr. R. C. Hopkins, who is charged as interested in this property, and contributing to the successful fraud in the location of the land in controversy, states in his deposition that he was then 67 years of age; that he was in the office of the United States surveyor general for California from 1855 until 1879, having charge of the Spanish archives, which included the records of the grants made by the governments of Spain and Mexico. Of this witness it may be generally stated that he was shown to be a man of very high character, exceedingly useful to the government on account of his familiarity with and control of these valuable documents, and very much relied on by all persons interested in the location of surveys in that country, or in the validity of Mexican grants. In regard to this particular transaction, he states that he was in that office, in the capacity of keeper of the archives, in 1864, when the survey was made which is the subject of controversy, at which time Mr. Beale was surveyor general; that he saw the written application made by ****862** Hancock through Patterson, for a survey of the *rancho* at that time, and probably wrote the instructions for it to be made. Upon being asked who was the deputy-surveyor who made the survey, he said that it was George H. Thompson. He was then asked, 'By whom was he selected?' to which he replied, 'I don't know, but I presume that the surveyor general appointed him on his own motion;'

and proceeded to say that the instructions were signed by the surveyor general. He was then asked, 'Was there any person in the surveyor general's ***295** office at that time who had any interest in this grant?' to which he replied, 'To my knowledge, no.' The inquiry was then made, 'Do you know of any reason, object, or purpose in locating that grant on the part of anybody in the office other than to locate it according to the decree of confirmation?' to which he answered, 'I do not.' 'Had you any interest in this matter before the issuance of patent?' To this he replied, 'No, sir; neither directly nor indirectly.' He was then asked if either Upson or Beale, the surveyors general, or Wilson, the commissioner of the general land-office, or Thompson, the deputy who made the survey, or Whiting, had any interest in the claim prior to the issuance of the patent; to which he answered in each case that they had not. He was afterwards interrogated about some shares of the stock of this company, which he said he had accepted from Conway as a sort of compensation for previous losses in other speculation, and upon which he paid large assessments, and finally gave them up, because he was unable or unwilling to continue the payments required. Hancock, Upson, and Wilson, he states, are dead. He also testifies that, with the fullest knowledge of the surveys and papers, and after an examination of the records in the office at San Francisco, it seems to him that it would be impossible to attempt to locate the *rancho* in any other way so as to conform to the decree of the court, and that this land is located within the general limits of the tract called 'San Jacinto,' and did conform to that decree. Upon being asked if it was possible for him to be mistaken about this matter, he replied: 'I don't think so. It is a question of landmarks that are unmistakable in their location, having historical names. It is hardly a matter in which judgment is to be much exercised, but is a matter of fact; at least, I looked upon it at that time as such, when I made this report.' To the question, 'Was that location made arbitrarily, without reference to courses or distances, or under the direction or dictation of Conway?' he answered: 'I think it was made under the instructions of the surveyor general; I presume, without any dictation from any one. There were probably some instructions to follow, ***296** when public lands were surveyed, the lines of the public surveys. * * * That survey, I presume, was made in accordance with the decree of the district court, and with all the *data* that could be obtained.' It appears, also, that Hopkins made the report of the survey to the surveyor general, and that he does not doubt that it was correctly made.

The deposition of Thompson, the deputy who made the survey, was taken, and his examination of several hundred pages if mainly confined to his acts in regard to it, and the means which he had for making it correctly. On this branch of the subject it is sufficient to say that his statement is very clear to the effect that the survey was properly located, although he admits that he did not go upon the land, but made the location, under directions from the surveyor general, from maps in his office showing the actual objects which constituted the out-boundaries of the *sobrante* and the other locations which had priority to this. During his examination he was asked what he knew about the ownership of the claim at the time the surveys were made. To this he replied in effect, that he did not know Conway was the owner; that he understood the request for the survey proceeded from Hancock, or from attorneys employed by Hancock, who represented the grantee in the decree of confirmation. He nowhere intimates, nor was he at any time asked, whether he had an interest in the survey at that time, and there is in fact a total failure ****863** to establish the allegation that he had any interest whatever, either present or prospective, in the claim when the survey was made by him, or was influenced by anybody who had.

Without going further into the *minutiae* of the testimony on this subject, we are of opinion that there is no evidence that establishes any interest in the claim under consideration prior to the issuance of the patent in any man who was connected with the land department of the government, whether as surveyor general, deputy-surveyor, clerk, or otherwise, except Conway, that Conway's interest was well known to the surveyors general who at different times had charge ***297** of this matter, as well as to the commissioner of the general land-office and the secretary of the interior, who finally passed upon it, and that he abstained from any inteference with the making of the survey or the officers who had it in charge, except that probably, while he was in Washington, he looked after its confirmation. The attempt to deduce an inference of fraud in the establishment of this survey, and the final issue of the patent, from the circumstance that, after its issue, and when Conway had become the sole owner of the property, he, with many other persons of distinction, some of whom were engaged in other branches of the government service, and some connected with the land department, co-operated to organize a joint-stock company for its development and improvement, the shares of which they took, and upon which they paid many assessments, and from the further fact that a very few of them may have received such stock as compensation for aid rendered to Conway in his struggle to establish the title, is, we think, entirely repelled by the testimony, which shows that none of these persons had any interest in it at the time the fraudulent transactions are alleged to have occurred. It does not appear that the stock which they got was in any sense a compensation for services rendered

in establishing the survey, except in the case of Black and Lowery, who were the attorneys employed for that purpose, and received some of its shares as their compensation. To hold that these parties, such as Hopkins, Thompson, Upson, and perhaps others, when they found the stock of a corporation for sale which had promise of profit in it, by taking its shares, became *participes criminis* in a conspiracy to defraud the government, of which they knew nothing at the time the fraud is alleged to have been committed, and that the mere fact of their taking these shares of stock is evidence they took part in the conspiracy, is a species of logic on which patents granted by the United States should not be set aside. We do not hesitate to say that there is a total failure of evidence to establish any participation in this fraud on the part of any of the persons in the service of the government ***298** who are charged with having been engaged in it. While we do not wish to give countenance to the idea that an officer of the government, before whom any matter may come for his action, or to be acted upon in his office, should voluntarily acquire an interest in such matter, even though he disclose that interest, but, on the contrary, think that he should accept no such delicate position, nevertheless that circumstance alone should not be permitted to divest the rights of others of others, unless it be shown that such position was used in aid of an actual fraud. As to Conway, who had the principal, if not the sole, interest which could induce an effort to secure the false location of the grant, there is no sufficient evidence in the record to show that he undertook in any way to control the actual survey of this land. His testimony, given at a time when he could have had no pecuniary interest in the result of this suit, and delivered with a candor and apparent readiness to answer promptly all questions put to him, without any of the evasive expressions, such as, 'I don't know,' or 'I cannot remember,' so commonly used by false witnesses, commands our confidence.

The strongest argument against the commission of any fraud, and in favor of the correctness of the location of the grant by the survey, is to be found in ****864** the fact that it went through all the different offices in the land department to which it could possibly be taken, from its being filed by Thompson in the office of the surveyor general up to its consideration by the secretary of the interior himself, and in all these offices ample time was given for careful examination; and an actual scrutiny of the matter was made by reason of the contest of Stearns, who succeeded in having the lines of the survey changed, so as to exclude property in which he was interested. After this change was made, it was again brought before the commissioner, and argued by counsel on both sides, and considered in the light of all the facts which either party chose to bring before the office, and abundant time was given for its investigation. Mr. Wilson, the commissioner, was a man of many years' experience in the class of cases to which this belongs, and which he was then called upon to decide. He made a full ***299** report, which is in the record, to the secretary of the interior, Hon. O. H. Browning, a lawyer of eminence, and a man accustomed to weighing testimony, who, after having the case under cousideration from May 22, 1867, to October 19th, of the same year, made the following decision, which he referred back to the commissioner of the general land-office for execution: 'SIR: I have received your letter of the 22d May last, submitting for consideration the papers of the private land claim in California known as the 'Sobrante de San Jacinto,' and asking for instructions on the 'application for a patent to issue in accordance with the survey approved by the surveyor general of California.' A careful examination of the papers, and consideration of the arguments of counsel, have led me to concur in your opinion that all the requirements of the law have been complied with, and that patent should issue in accordance with the survey.' We consider this examination of the case in the office of the commissioner, and its re-examination by the secretary of the interior, as possessing the very strongest probative force in regard to the question of fraud, which was mooted before them, as well as the question of the proper location of the grant. No stronger evidence could be given of the honesty of Commissioner Wilson, and his belief in the correctness of the survey, than the fact of his reference of the whole matter to the secretary of his own mation, without any appeal by either party from his decision. They had in the land-office abundant materials for the investigation of all the matters in dispute. They had before them the interested parties, with all the evidence which they could collect, the records, the Mexican archives, and control of all the papers of the government since the territory came into the possession of the United States, as well as ample time,-more than this court has-to consider all these subjects. Very little that is new, or that throws any light upon the questions at issue, is now produced on the hearing of this case,

With regard to the question of fraud, we have no hesitation in saying that there is no such case made of intentional fraud, or actual fraud, committed upon the government of the United ***300** States in this transaction, as justifies the cancellation of the patent. We have quite recently given our views upon this subject very freely in the *Maxwell Land-Grant Case*, 121 U. S. 325, 7 Sup. Ct. Rep. 1015, in regard to the character of the testimony necessary to set aside such a solemn instrument as a patent of the United States. It was there held (page 381) 'that when, in a court of equity, it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in

the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upor a bare preponderance of evidence which leaves the issue in doubt. If the proposition as thus laid down in the cases cited is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal.' So far from there being the satisfactory evidence here pointed ****865** out of a fraud against the government having been perpetrated in this case, there is really little but suspicion, fierce denunciation, and a bitter use of such words as 'fraud,' 'deceit,' and 'imposition.' If the case stood alone upon the testimony introduced by the government, it would, so far as any fraudulent purpose is concerned, do but little more than raise a suspicion that the parties engaged in the transaction sought their own interest at the expense of the government, and not always by the most appropriate means; but, when the testimony for the defense is considered, it refutes, not only the existence of any such fraudulent intent or dishonest acts, but it removes from the main actors in the matter even the suspicion of having used underhand and improper means for the accomplishment of their purposes.

As regards the correctness of the location by survey of the grant, whose validity and justice is not questioned, we do not know that we can do better than to copy the language of the circuit judge presiding when the decree was rendered. In his opinion delivered on that occasion, and concurred in by the district judge, he said: 'It is confidently assumed on the part ***301** of complainant that the location of the lands patented is palpably wholly outside of the exterior limits described in the original petition, Mexican grant, and the decree of confirmation; that this is so obvious that the grant must have been willfully and fraudulently located where it is. This is an assumption that, in our judgment, is wholly without justification in the documentary and other evidence in the case. Upon a careful consideration of the subject, we are of the opinion that the most that can be reasonably said against the location is that the record presents a fair case for an honest difference of opinion; that a plausible argument can honestly be made in support of either side of the proposition. An erroneous location is certainly not so obvious as to necessarily stamp it as a fraud.' When we consider the greater facilities possessed by the land department of the government for ascertaining the true location, and their superior fitness for deciding questions pertaining thereto, over those of the judicial department, and when we also remember that this location underwent the scrutiny of the officers in the office of the surveyor general for California, as well as those of the general land-office at Washington, and even of the secretary of the interior himself, and was finally approved by them all, we are not disposed to make further inquiry as to whether the location was in all respects in exact accordance with what it might possibly be if a resurvey were made under the additional light, if any, now thrown upon the subject.

The result of all these considerations is that the decree of the circuit court is affirmed.

FIELD, J.

I concur in affirming the decree of the court below dismissing the bill in this case. The bill was filed to set aside a patent of the United States issued to Maria del Rosario Estudillo de Aguirre, and her heirs, for land situated in Southern California, in what is now known as 'San Bernardino County,' granted to her by the Mexican government. The grant was ***302** of the *sobrante*, or surplus lands remaining within the boundaries of a tract called 'San Jacinto,' after satisfying two previous grants. The claim under it was presented to the board of land commissioners created by the act of congress of March 3, 1851, to ascertain and settle private land claims in California, and was adjudged to be valid to the extent of five leagues. On appeal to the district court of the United States for the Southern district of California, the claim was confirmed to the surplus land lying within the designated boundaries, not exceeding in extent 11 square leagues. The case being brought to this court, the latter decree was affirmed. The judgment here was rendered at the December term, 1863. Then followed a protracted contest, accompanied with much feeling, for the location of the claim. There being within the San Jacinto tract a tin mine, then supposed to contain a rich ****866** body of metal, every step in the survey was contested. Witnesses were examined, and repeated arguments made by counsel representing the parties for and against the location sought. As there were no boundaries of the *sobrante* marked, by which the claim could be specifically designated, much was left to the judgment of the surveyor general, after having examined the topography of the county, and heard the statements of witnesses familiar with it. The limitation made by the grant itself only required that the claim should be located within the exterior boundaries of the San Jacinto, and not encroach upon the land covered by the previous grants. In the determination of the survey and location several years were occupied. The matter was at different times before all officers of the land department whose judgment could control any of the several steps of the proceedings, the United States surveyor general for the state, the commissioner of the general land-office,

and the secretary of the interior. Every objection now urged against the survey as a ground for revoking the patent was taken before them, fully argued and held to be untenable. At length, on the 26th day of October, 1867, a patent was issued to the claimants, from whom the defendant, the San Jacinto Tin Company, derives its title. ***303** In April, 1883, after the company had been in possession of the property for nearly 16 years, and after all the other land within the exterior boundaries of the San Jancinto tract had been patented to the previous grantees, or sold by the United States, so that, if the location and survey on which the patent was issued could be set aside, there would be no land left to satisfy the grant without annulling titles which the United States had conveyed to other parties, this suit was brought. And it was not brought upon any new fact produced, nor any new reason assigned why the original survey should be disturbed. All the grounds of complaint presented for the new litigation had been urged, and fully considered before. And as if convinced that no beneficial result could come to the United States from the re-opening of the old controversy, as if afraid that the United States might be cast in the litigation,-a bond was taken from one R. S. Baker, with sureties, to keep the United States harmless from all costs and expenses which might be incurred by or against them in the prosecution of the suit. The original contest upon the survey was carried on, and the expenses of it borne, by one Abel Stearns. Since his death this R. S. Baker married the widow of Stearns, and has sought to retry the issues as to the survey which were decided and determined in the land department years before, when Abel Stearns was living. The bond recites that 'the attorney general of the United States of America has this day filed, at the request of the above-named R. S. Baker, a bill in equity in the name of and on behalf of said United States of America against the San Jacinto Tin Company' to vacate the patent. Not for the interest of the United States, not for the protection of their property, or to vindicate their honor, but at the request of a private litigant, the name and power of the United States are invoked by the attorney general to set aside a patent issued after a protracted contest upon the survey with the predecessor of this litigant.

If this were a solitary instance where the name and power of the United States have been used to serve the interests of private parties, it might be passed by with the simple statement of the facts. But, unfortunately, it is not a solitary ***304** instance. The records of this court show that it has been a frequent practice of the department of justice in authorizing suits for the cancellation of patents. In *U. S.* v. *Throckmorton*, 98 U. S. 70, which was here at the October term, 1878, it appeared that the district attorney of California was directed by the attorney general to bring suits to vacate patents for lands in that state, upon security being given by one John B. Howard, or a deposit made by him, of a sufficient sum to defray the expenses which might be incurred in the litigation, and the bills filed upon such authority were not sworn to, nor even authenticated by the signature of the attorney general. In this ****867** case the bill bears the signature of the attorney general in office at the time it was filed. His signature gives some assurance, which was wanting in the *Throckmorton Case*, of his belief in its allegations, and that the suit is really brought by the United States to protect their rights, and not merely to promote the interests of private individuals. In that and other cases brought on the authority of the attorney general, the patents embraced many thousand acres of land, and one of the judges holding the circuit court observed that 'It is not to be supposed that, if the attorney general were persuaded that so large and valuable a property belonged to the United States, he would have made the assertion of its rights to depend upon the willingness or ability of private individuals to defray the expense of the litigation.' *U. S.* v. *Flint*, 4 Sawy. 83. In the present case the bill seeks, by setting aside a patent of the United States, to restore 11 leagues of land to the public domain; and yet so doubtful did the attorney general appear to consider the rights of the United States to this vast tract that he required from the party at whose instance the suit was brought a bond of indemnity against the expenses of the proceeding. In commenting upon a similar bond, when the *Case of Throckmorton* was here, the court, speaking by Mr. Justice MILLER, said: 'It would be a very dangerous doctrine, one threatening the title to millions of acres of land held by patent from the government, if any man who has a grudge or a claim ***305** against his neighbor can, by indemnifying the government for costs, and furnishing the needed stimulus to a district attorney, institute a suit in chancery in the [name of the] United States to declare the patent void. It is essential, therefore, to such a suit, that, without special regard to form, but in some way which the court can recognize, it should appear that the attorney general has brought it himself, or given such order for its institution as will make him officially responsible for it, and show his control of the cause.' 98 U. S. 61, 71. And yet this requirement does not seem to have been potential enough to induce such an examination of the rights of the United States as to justify in the present case the attempt to enforce them without security from private parties.

I cannot admit that the attorney general can, at the request of private parties, rightfully allow the use of the name and power of United States in proceedings for the annulment of patents, upon such parties executing a bond as security

for costs, or upon any other stipulation of indemnity to them. If the United States have not sufficient interest in property to justify the expenses of proper litigation for its maintenance, they had much better let it go. It would seem that congress designed to put its mark of condemnation upon the practice of obtaining services from private parties, without incurring liabilities for them, such as was adopted in this case, when, on May 4, 1884, it declared that 'hereafter no department or officer of the United States shall accept voluntary service for the government, or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property.' 23 St. U. S. 17. The language here used clearly indicates that the government shall not, except in the emergencies mentioned, place itself under obligations to any one. The principle condemned is the same, whether the party rendering the service does so without any charge, or because paid by other parties. The government is forbidden to accept the service in either case. It is not to be supposed that any head of the department of justice has or would intentionally lend the name and power ***306** of the government to further private ends, and yet there is no practical difference between that course of procedure and the one adopted in this case. The opinion of the court shows, above all controversy, the utter groundlessness of the charges upon which it is sought to set aside the survey. A very little attention to the proceedings had before the land department in the contest upon that survey would have satisfied the attorney general of the futility of any attempt to disturb it, and it is not probable that he would have authorized any.

****868** But, independently of these considerations, I cannot assent to the position announced in the opinion of the court that the attorney general has unlimited authority, by virtue of his office, to institute suits to set aside patents issued by the government. He is the head of the department of justice, and, as such, he is charged with the superintendence and direction of all district attorneys of the United States, and generally of all litigation in which the United States are interested. He is also the legal adviser of the heads of the executive departments; and if they are fraudulently imposed upon in the discharge of their duties, or have mistaken the law, he may, at their request, take such legal proceedings as are necessary to correct their errors and revoke their action. The legislation of congress points out the infinite variety of cases where legal proceedings may be taken on behalf of the United States in the enforcement of their rights, the protection of their property, and the punishment of offenses; and wherever no authority is conferred by statute, express or implied, for the institution of suits, none in my judgment exists. Whenever congress has felt it important that patents for lands should be revoked, either because of fraud in their issue, or of breach of conditions in them, it has not failed to authorize legal proceedings for that purpose. In a multitude of cases, titles to lands, upon which whole communities live, rest upon patents of the United States. In several instances, cities having more than a hundred thousand people residing within their limits are built on land patented by the government. I cannot believe that it is within the power of the attorney general, to be exercised at any time in the future,-this generation or the next,-as no ***307** statute of limitations runs against the government, to institute suits to unsettle the title founded upon such patents, even where there are allegations of fraud in obtaining them. There must be a time when such allegations will not be heeded. The examination into alleged frauds, when the patents are applied for, ought to close all controversy respecting them; clearly so, unless, upon newly-discovered evidence of the most convincing character, congress should direct proceedings to be instituted to set aside the patents, and that result can be obtained without impairing the title of innocent parties. The power of the attorney general, if admitted when a single person holds title under a patent, may be exercised in cases where a whole community holds under a similar instrument. If, without the authority of congress, such proceedings may be instituted by him upon the repetition as in this case, of old charges, or upon the unsupported statements of interested parties, a cloud may at any moment be cast upon the titles of a whole people, and there would be in his hands a tremendous weapon of vexation and oppression. I can never assent to the position that there exists in any officer of the government a power so liable to abuse, and so dangerous to the peace of many communities.

I do not recognize the doctrine that the attorney general takes any power by virtue of his office except what the constitution and the laws confer. The powers of the executive officers of England are not vested in the executive officers of the United States government, simply because they are called by similar names. It is the theory, and, I may add, the glory, of our institutions, that they are founded upon law; that no one can exercise any authority over the rights and interests of others except pursuant to, and in the manner authorized by, law. In the case of *The Floyd Acceptances*, 7 Wall. 676, speaking of the powers of an officer of the government,-in that case, of the secrerary of war,-this court said: 'When this inquiry arises, where are we to look for the authority of the officer? The answer which at once suggests itself to one familiar with the structure of our government, in which al ***308** power is delegated, and is defined by law, constitutional or statutory, is that to one or both of these sources we must resort

in every instance. We have no officers in this government, from the president down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority.' If the attorney general possesses the powers ascribed to him, in ****869** the absence of any law defining them, we have this singular condition presented: that the owner of property, derived from the United States by the most solemn instruments, holds his possession subject to the liability that it may be disturbed at any time by a suit of the government, brought at the will of that officer,-a not very creditable commentary on our institutions; but, if the owner can trace his title to some other source, he may have a reasonable degree of certainty that he will not be unnecessarily disturbed.

Aside from the qualifications thus expressed to the views of the court, there is much in the opinion which gives me great satifaction. It holds that in suits brought by the government for relief against an instrument alleged to have been obtained by fraud or deceit, or any practice which would justify a court in granting relief, the government must show, like a private individual, that it has such an interest in the relief sought as entitles it to move in the matter. If it be a question of property, a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud, which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States have no pecuniary interest in the remedy sought, and are under no obligation to the party who will be benefited, to sustain an action for his use. In short, if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of their own, they can no more sustain such an action than any private person could, under similar circumstances. From this ruling some degree of peace and security may come to holders of titles derived by patent from the government.

***309** From the clear and full statement in the opinion of the court of the case and of the controversies before the land department, involving the same questions now presented, there can be but one conclusion, and that is that the decree below dismissing the bill was in consonance with justice and right.

All Citations

125 U.S. 273, 8 S.Ct. 850, 31 L.Ed. 747

Negative Treatment

Negative Citing References (2)

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by	1. In re Green River Drainage Area MOST NEGATIVE 147 F.Supp. 127 , D.Utah Action by Utah state engineer against United States and others to obtain general determination of certain water rights under Utah law. State engineer moved to remand case to state...	Dec. 07, 1956	Case		—
Distinguished by	2. Appeal of Swan Wooster Engineering, Inc. 94-1 BCA P 26287 , Ag.B.C.A. This appeal arises under contracts No. AG41scs00306 and 53-0436-9-9 between the Soil Conservation Service (SCS), U. S. Department of Agriculture and Swan Wooster Engineering, Inc....	Aug. 13, 1993	Administrati Decision		—

History (2)

Direct History (2)

1. U.S. v. San Jacinto Tin Co.
10 Sawy. 639 , C.C.D.Cal. , Mar. 23, 1885

Affirmed by

2. U.S. v. San Jacinto Tin Co.
125 U.S. 273 , U.S.Cal. , Mar. 19, 1888

Filings

There are no Filings for this citation.

[redacted]
Attorney at Law
530 West Sixth Street
Los Angeles, California
Mi 8478
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF [redacted]

[redacted], and [redacted],

Plaintiffs,

-vs-

HENRY F. CHARLES, ROBERT PANTAGES, LOIS PANTAGES, MIAMEY STORE, INC., a corporation, DOE COMPANY, a corporation, DOE & ROE, a co-partnership, JOHN DOE ONE, JOHN DOE TWO and JANE DOE,

Defendants.

No. 33145

[redacted]

Unlawful Detainer

Plaintiffs complain of the above named defendants and each of them and for cause of action allege:

I.

That the above named defendants, Miamey Store, Inc., and Doe Company, are each and both corporations duly organized and existing under and by virtue of the laws of the State of California, with their principal place of business in the City of Los Angeles, County of Los Angeles, State of California. That the defendants, Doe & Roe, are co-partners doing business in the City of Los Angeles, County of Los Angeles, State of California under the firm name of Doe & Roe.

II.

That the above named defendants, Doe Company, Doe & Roe, John Doe One, John Doe Two and Jane Doe, are sued herein under

fictitious names because the true names of said defendants are not now known to these plaintiffs and these plaintiffs will ask leave to insert the true names of said defendants into this complaint by appropriate amendment hereof if and when same are ascertained.

XII.

That the above named defendants, Henry F. Charles, Rodney Pantages and Lois Pantages are each and all residents of the County of Los Angeles, State of California.

IV.

That the plaintiffs are the owners of and entitled to the immediate possession of those certain lands and properties located in the County of Riverside, State of California, more particularly described as follows:

Said real property situate in Section 15, Township 4 South, Range 6 West, S. B. M. in the County of Riverside, State of California, more particularly described as follows:

Commencing at a point 582.78 feet south 25° 49' 53" east from an iron pipe which is located 880 feet south 89° 51' 27" east from compromise corner on the westerly line of said Section 15 marked 5/XI; thence south 73° 49' 53" east 633.06 feet, thence south 35° 49' 53" east 512.12 feet, thence south 0° 49' 53" east 454.07 feet, thence south 34° 10' 8" west 488.17 feet (to a point which is 500 feet north 22° 49' 53" west from a point on the south line of said Section 15 which is 1210 feet north 89° 25' 07" west from the south quarter corner of said Section 15), thence north 25° 49' 53" west 140 feet to a point 50 feet from the center line of the tracks of the Atchison, Topeka & Santa Fe Railroad as now located, thence along an arc parallel to and 50 feet distant from the center

line of said tracks 1111.37 feet, thence north 25° 49' 52" west 362.31 feet, all as per survey of said premises made by H. H. Hackney, licensed Surveyor as delineated on his map.

V.

That on or about the 1st day of August, 1938, plaintiffs, by a written lease, demised and let said premises to the above named defendant, Henry F. Charles.

VI.

That by virtue of said lease, said defendant went into possession of said premises and still continues to hold and occupy the same.

VII.

That said lease contained among other things a certain covenant which provides as follows:

"13. ASSIGNMENTS AND SUB-LEASES: No sub-lease of the leased premises in whole or in part, nor any assignment of this lease, in whole or in part, shall be made by the lessee without the written consent of the lessors being first obtained, and any purported assignment or sub-lease without such written consent having first been obtained shall be null and void and of no force or effect whatsoever."

VIII.

That thereafter on or about the 31st day of December, 1938, a certain amendment was executed by and between these plaintiffs and the aforesaid defendant which provided, among other things, that the aforesaid lease could be assigned to Blarney Stone, Inc., a corporation, one of the defendants herein, provided that the majority of the shares in said corporation be

held by the aforesaid defendant, Henry F. Charles; that the balance of the shares of said corporation be held by defendants, Lois Pantages and Rodney Pantages.

IX.

That plaintiffs are informed and believe and therefore aver that the above named defendants, Kearney Stone, Inc., a corporation, Lois Pantages, Rodney Pantages and John Doe One went into possession of said premises after the execution of the aforesaid amendment to said lease.

X.

That thereafter some time during the month of June, 1940, the aforesaid defendants, and each of them, did execute an assignment or did sub-let the aforesaid demised premises to defendants, Doe & Doe, a co-partnership, John Doe One, John Doe Two and Jane Doe, in violation of the aforesaid covenant contained in the aforesaid lease; that by reason thereof the aforesaid lease to the aforesaid defendants, Henry F. Charles and Kearney Stone, Inc., a corporation, was thereby terminated.

XI.

That thereafter on or about the 2nd day of August, 1940, these plaintiffs made demand in writing upon said defendants and each of them to deliver up and surrender to these plaintiffs the possession of said premises.

XII.

That more than three days have elapsed since the making of such demand and that said defendants, and each of them, have refused and neglected for the space of three days after such demand to quit the possession of said premises; that said defendants, and each of them, now continue to occupy said premises and refuse to deliver up or surrender to these plaintiffs the possession of same; that said defendants, and each of them, now

unlawfully detain the said premises and possession thereof from these plaintiffs.

XIII.

That since said termination of the aforesaid lease by the aforesaid assignment or sub-letting in violation of the aforesaid covenant these plaintiffs have received offers to sell rock from the aforesaid premises; that by reason of the unlawful detention of said premises and possession thereof by said defendants, and each of them, from these plaintiffs, these plaintiffs have been unable to accept the aforesaid offers; that by reason thereof these plaintiffs have been damaged in the sum of Five Thousand ($5,000.00) Dollars.

WHEREFORE, these plaintiffs pray judgment against said defendants, and each of them, as follows:

1. For restitution of said premises;

2. For damages for unlawful detention of said premises and possession thereof from these plaintiffs in the sum of Five Thousand ($5,000.00) Dollars;

3. For plaintiffs' costs in this action expended; and

4. For all other and further proper relief in the premises.

Attorney for Plaintiffs.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE.

L. M. HARLOW and FRANK M. HURST,

Plaintiffs,

-vs-

HENRY F. CHARLES, RODNEY PANTAGES, et al,

Defendants.

No. 39199

ANSWER OF DEFENDANT BLARNEY STONE, INC, A CORPORATION,

BEVERLY R. PARKER
ATTORNEY AT LAW
6331 HOLLYWOOD BOULEVARD
HOLLYWOOD 9881
HOLLYWOOD, CALIFORNIA

Comes now the defendant, Blarney Stone, Inc., a corporation, and by way of answer to the complaint of plaintiffs on file herein, for itself alone, admits, denies and alleges as follows, to-wit:

I.

By way of answer to paragraphs IV, V and VI, this answering defendant denies generally the allegations therein contained.

II.

By way of further answer to said paragraphs IV, V and VI, this answering defendant admits that the plaintiffs did enter into a written lease with the defendant, Henry F. Charles, on or about the 1st day of August, 1938, and this answering defendant is informed and believes and on such information and belief alleges that the said lease did cover certain premises which included the property described in paragraph IV, and that said defendant, Henry F. Charles, did go into possession of the premises described in said lease.

IV.

By way of answer to paragraph VII this answering defendant admits that the said lease as entered into by the plaintiffs and the said Henry F. Charles on August 1st, 1938, did contain the alleged provision. But by way of further answer to said paragraph this answering defendant alleges that said provision was amended and of no further effect after December 31st, 1938, as is more particularly hereinafter alleged.

IV.

By way of answer to paragraph VIII this answering defendant admits that on or about the 31st day of December, 1938, a certain amendment was executed by and between the plaintiffs and the defendant Henry F. Charles. That a copy of said amendment is hereto attached marked Exhibit "A" and made a part hereof for each and every purpose as if set out herein in full.

V.

By way of answer to paragraph IX this answering defendant admits that it went into possession of the premises described in said lease, but denies that it so went into possession after the execution of the aforesaid amendment, but, on the contrary, alleges that it went into possession and did work and develop said premises prior to the execution of the aforesaid amendment, all with the full knowledge and consent of the plaintiffs.

VI.

By way of answer to paragraph X this answering defendant denies generally and specifically each and every allegation therein contained.

VII.

By way of answer to paragraph XI this answering defendant admits generally the allegations therein contained. That attached hereto marked Exhibit "B" and made a part hereof for each and every purpose as if set out herein in full, is a copy of the said notice received by this answering defendant.

VIII.

By way of answer to paragraph XII this answering defendant admits generally the allegations therein contained, except that it denies that its possession of the premises is unlawful or otherwise without right or wrongful.

IX.

By way of answer to paragraph XIII this answering defendant alleges that it has neither knowledge nor information sufficient to form a belief as to the truth of the allegations therein contained, and on that ground and for that reason asks that same be taken as denied.

By way of further answer to said paragraph XIII this answering defendant denies specifically that said lease has terminated or that there has been an assignment or sub-letting thereof by it.

BY WAY OF A SEPARATE AND DISTINCT DEFENSE TO SAID CAUSE OF ACTION, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS, TO-WIT:

I.

That on or about the 1st day of August, 1938, the plaintiffs entered into a written lease with the defendant Henry F. Charles covering certain real property situated in the County of Riverside, State of California, all as is more particularly recited and described in Exhibit "A" attached hereto and made a part hereof for each and every purpose. That said lease also contains as paragraph 13 thereof that certain provision as set out in paragraph 7 of plaintiffs' complaint, and also contains a paragraph designated number 18 which provides as follows:

"TERMINATION FOR DEFAULT: If any rents or royalties shall be due and unpaid hereunder or if default shall be made in performance of any of the covenants or agreements herein contained to be performed by lessee this lease shall thereupon terminate and lessors may without any demand or notice to lessee or to any other person whomsoever re-enter and take possession of said premises and remove all persons therefrom."

II.

That thereafter, to-wit, on or about the 31st day of December,

1938, the plaintiffs and the defendant Henry F. Charles, entered into a certain amendment of lease. That a copy of said amendment is hereto attached marked Exhibit "A" and made a part hereof for each and every purpose as if set out herein in full.

III.

That thereafter, to-wit, on or about the 20th day of November, 1939, this answering defendant then being in possession of certain property including the property described in the said paragraph [illegible] of plaintiffs' complaint, entered into a certain agreement with the plaintiffs. That the terms of said agreement are set out in that certain writing copy of which is attached hereto marked Exhibit "[illegible]" and made a part hereof for each and every purpose as if set out herein in full, and this answering defendant did at said time pay to the plaintiffs and the plaintiffs did accept the sum of Five Hundred Dollars ($500.00) being the consideration stated therein.

IV.

That thereafter this answering defendant paid to the plaintiffs and the plaintiffs accepted at various times and in various amounts certain payments in full for royalties due under the terms of said lease as amended by said agreement of November 20th, 1939, said respective amounts and the dates upon which each was paid being as follows:

December 19th, 1939	$ 76.18
January 18th, 1940	207.53
March 1st, 1940	81.41.

V.

That although this answering defendant had performed all the obligations incumbent upon it to be performed under the terms of said lease as amended, it did receive, by registered mail, a certain "Notice of Termination" directed to it by the plaintiffs bearing date of July 20th, 1940. That said notice was substantially in the form of that certain "Amended Notice of Termination" copy of which is attached hereto marked Exhibit "B" and made a part hereof for each and every purpose as if set out herein in full.

RUDLEY E. PURER
ATTORNEY AT LAW
[illegible] HOLLYWOOD BOULEVARD
HOLLYWOOD, CALIFORNIA

VI.

That this answering defendant did thereafter and on or about and under date of July 25, 1940, through its attorney, answer said Notice and did deny that there was any breach on its part and/or that the plaintiffs had any right to terminate or attempt to terminate said lease. That a copy of said answer is attached hereto marked Exhibit "D" and made a part hereof for each and every purpose as if set out herein in full.

VII.

That thereafter, to-wit, on or about August 2, 1940, and although this answering defendant had performed all the obligations incumbent upon it to be performed under the terms of said lease as amended, it did receive a certain "Amended Notice of Termination". That a copy of said Amended Notice is hereto attached marked Exhibit "E" and made a part hereof for each and every purpose as if recopied herein in full.

VIII.

That this answering defendant did thereafter and on or about and under date of August 5, 1940, through its attorney, answer said notice and did again deny that there was any breach on its part and/or that the plaintiffs had any right to terminate or attempt to terminate said lease. That a copy of said answer is attached hereto marked Exhibit "F" and made a part hereof for each and every purpose as if set out herein in full.

WHEREFORE, this answering defendant prays that plaintiffs take nothing by their said action; that defendant go hence with its costs, and for such other and further relief as the Court may deem meet and proper in the premises.

Dudley R. Furse
Attorney for defendant, Blarney Stone, Inc., a corporation.

DUDLEY R. FURSE
ATTORNEY AT LAW
6253 HOLLYWOOD BOULEVARD
HOLLYWOOD 0281
HOLLYWOOD, CALIFORNIA

EXHIBIT "A"

AMENDMENT OF LEASE

THIS AGREEMENT made and entered into this 31st day of December, 1938, by and between FRANK M. KUHRY, a single man, and L. M. HARLOW, a single woman, hereinafter called Lessors, and HENRY F. CHARLES, hereinafter called Lessee, all of the City of Los Angeles, State of California,

W I T N E S S E T H:

WHEREAS, the parties hereto did on or about the 1st day of August, A. D. 1938, enter into a written lease covering that certain real property situated in the County of Riverside, State of California, and more particularly described as follows:

> Commencing at a point common to Sections 16, 9, 10 and 15, Township 4 South, Range 6 West, S.B.B.&M., thence South 0 degrees 50 minutes 45 seconds West along the West line of the Northwest Quarter of Section 15, 2621.19 feet, to the West quarter corner Section 15, thence South 89 degrees 51 minutes 37 seconds East 250.00 feet, to stone monument, Station 21, of the El Sobrante de San Jacinto Survey compromised corner. The point of beginning. Thence South 36 degrees 41 minutes 05 seconds East 247.91 feet; Thence South 47 degrees 08 minutes 50 seconds East 566.09 feet, Thence East 220.00 feet, Thence South 67 degrees 55 minutes 55 seconds East 399.25 feet, Thence South 27 degrees 24 minutes 27 seconds East 152.07 feet, Thence South 58 degrees 29 minutes, 44 seconds East 363.59 feet, Thence South 69 degrees 26 minutes 38 seconds East 213.60 feet, Thence South 86 degrees 49 minutes 13 seconds East 180.27 feet, Thence North 56 degrees 14 minutes 47 seconds East 170.50 feet, Thence South 50 degrees 30 minutes 44 seconds East 105.93 feet, Thence North 80 minutes 50 seconds East 255.00 feet, Thence South 2 degrees 40 minutes 16 seconds East 187.97 feet, Thence South 32 minutes 30 seconds West 150.00 feet. Thence South 2 minutes 0 seconds West 290.00 feet. Thence North 78 minutes 0 seconds West 275.00 feet. Thence West 520.00 feet, Thence South 600.00 feet, Thence South 25 degrees 05 minutes 38 seconds West 508.94 feet, Thence North 24 degrees 29 minutes 2 seconds West 2927.83 feet to point of beginning, Station 21 of the El Sobrante de San Jacinto Survey compromised corner, Section 15, Township 4 South, Range 6 West, S. B. B. & M., Consisting of 41.6483 Acres within description;

said lease being recorded on the 18th day of October, 1938, in book No. 398 of Official Records, page 90, of said County; and

WHEREAS, it is the mutual wish and desire of the parties hereto that certain terms and conditions of said lease be amended;

NOW, THEREFORE, in consideration of the mutual and respective covenants and agreements hereinafter contained and the mutual and respective benefits to be derived therefrom,

IT IS UNDERSTOOD AND AGREED AS FOLLOWS:

(1) That said lease is hereby amended by adding after the word "lease" in line 3 on page 2 thereof, the words "and to carry on generally upon and from said property the business of mining, milling, quarrying and otherwise preparing for market, producing, and/or dealing in minerals, quartz, stone, sand and gravel."

(2) That paragraph 5 thereof is hereby amended by inserting after the word "lease" in line 16 on page 4 thereof, the words "considering transportation facilities and the cost thereof"; and after the word "shall" in line 24 on page 4, the words "under the above conditions"; and by striking from lines 25 and 26 on page 4, the words "so far as possible and".

(3) That paragraph 13 thereof is hereby amended by inserting before the word "no" in line 27, on page 6 thereof, the following: "This lease may be assigned by the lessee to Blarney Stone, Inc., a California corporation; it being understood and agreed, however, that the said Corporation represents that it intends to and that it will, in the event it issues stock, issue a majority of same having voting power to Rodney A. Pantages and/or Lois A. Pantages and/or Henry F. Charles; and in the event that said Corporation should issue its said stock contrary to its said expressed intention, or in the event, after having so issued said stock, there should occur a voluntary transfer of shares resulting in the said Rodney A. Pantages and/or Lois A. Pantages and/or Henry F. Charles owning less than a majority of the outstanding voting shares thereof, then the said issue contrary to said representation or

said transfer shall be deemed an assignment of this lease by said Corporation and, if without Lessors' written consent, a violation of the provisions of said lease."

(4) That paragraph 15 thereof is hereby amended by inserting after the word "terminate" in line 23 on page 7 thereof, the words "if such default has not been remedied by Lessee within ten days after receipt by him of written notice thereof from Lessors"; and after the word "may" in the same line and page, the word "then"; and after the word "any" in the same line and page, the word "further."

(5) Lessee shall not use the words "Blarney Stone" in any manner in connection with the advertising, exploitation, sale or distribution of any rock except rock mined, quarried or removed from the premises herein described.

(6) That all the terms and conditions of said lease of August 1st, 1938, as hereby amended, are hereby affirmed and ratified and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year in this agreement first above written.

FRANK M. KUHRY

L. M. HARLOW
LESSORS

HENRY F. CHARLES
LESSEE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this 26th day of January, 1939, before me, the undersigned, a Notary Public in and for said County and State, personally appeared FRANK M. KUHRY and L. M. HARLOW, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

EDNA TAFT
Notary Public in and for the County of Los Angeles, State of California.

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this 26th day of January, 1939, before me, the undersigned, a Notary Public in and for said County and State, personally appeared HENRY F. CHARLES, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DUDLEY H. URSE
Notary Public in and for the County of Los Angeles, State of California

(SEAL)

EXHIBIT "B"

AMENDED NOTICE OF TERMINATION

TO:

HENRY F. CHARLES
LOIS PANTAGES
RODNEY PANTAGES
[illegible] CHARLES, INC.
Pantages Theatre Building
[illegible] Hollywood Boulevard
Hollywood, California

Reference is hereby made to that certain lease executed under date of August 1st, 19[illegible], by and between Frank M. Kuhry and L. M. Harlow as lessors, and Henry F. Charles as lessee, covering real property located in the County of Riverside, State of California, more particularly described as follows:

> Said real property situate in Section 15, Township 4 South, Range 6 West, S. B. M. in the County of Riverside, State of California, more particularly described as follows:
>
> Commencing at a point 502.75 feet south 23° 48' 53" east from an iron pipe which is located 250 feet south 89° 51' 37" east from compromise corner on the westerly line of said Section 15 marked [illegible]; thence south 79° 47' 53" east 633.06 feet, thence south [illegible]° 40' [illegible]" east 812.12 feet, thence north 0° 48' 53" east 464.07 feet, thence south 24° 10' 9" west 488.17 feet (to a point which is 800 feet north 23° 48' 53" west from a point on the south line of said Section 15 which is 1219 feet north 89° 25' 07" west from the south quarter corner of said Section 15), thence north 23° 48' 53" west 140 feet to a point 50 feet from the center line of the tracks of the Atchison, Topeka & Santa Fe Railroad as now located, thence along an arc parallel to and 50 feet distant from the center line of said tracks 1111.37 feet, thence north 23° 48' 53" west [illegible] feet, all as per survey of said premises made by H. R. [illegible], licensed Surveyor as delineated on his map.

Reference is further made to that certain amendment to said lease executed under date of December 31st, 1938, by and between F. M. Kuhry and L. M. Harlow as lessors and Henry F. Charles as lessee.

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the lease held by you covering the above described real property heretofore terminated by reason of your violations thereof;

YOU ARE ACCORDINGLY HEREBY REQUIRED AND NOTIFIED to remove from and vacate said premises and surrender and deliver possession of same to us on or before the 6th day of August, 1940.

This notice is given under Sub-section 4 of Section 1161 of the Code of Civil Procedure of the State of California for the purpose of terminating your occupancy of said premises.

Dated this 2nd day of August, 1940.

FRANK H. [illegible] and L. H. [illegible]

By [illegible], their attorney

By [signature]

EXHIBIT "C"

THIS AGREEMENT made and entered into this 20th day of November, 1939, by and between FRANK M. KUHRY, a single man, and L. M. HARLOW, a single woman, hereafter called "Lessors" and BLARNEY STONE, INC., a California corporation, hereinafter called "Lessee";

W I T N E S S E T H:

WHEREAS, the above named lessors and one Henry F. Charles did under date of August 1st, 1938, execute a certain lease covering real property of said lessors located in the County of Riverside, State of California, said lease being recorded in Book 398 of Official Records, page 90, of said County; and

WHEREAS, said parties did thereafter under date of December 31st, 1938, execute a certain amendment to said lease; and

WHEREAS, the parties hereto desire further to amend said lease upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. That the description of the property covered by said lease and amendment thereto is hereby amended to read as follows:

> "That said real property situate in Section 15, Township 4 South, Range 6 West, S. B. M. in the County of Riverside, State of California, more particularly described as follows:
>
> Commencing at a point 592.78 feet south 23° 49' 52" east from an iron pipe which is located 250 feet south 89° 51' 37" east from compromise corner on the westerly line of said Section 15 marked SJ21; thence south 73° 49' 52" east 633.05 feet, thence south 35° 49' 52" east 512.12 feet, thence south 0° 49' 52" east 454.07 feet, thence south 34° 10' 8" west 488.17 feet (to a point which is 500 feet north 23° 49' 52" west from a point on the south line of said Section 15 which is 1210 feet north 89° 25' 07" west from the South quarter corner of said Section 15), thence

north 23° 49' 52" west 149 feet to a point 50 feet from the center line of the tracks of the Atchison, Topeka & Santa Fe Railroad as now located, thence along an arc parallel to and 50 feet distant from the center line of said tracks 1111.37 feet, thence north 23° 49' 52" west 362.31 feet, all as per survey of said premises made by H. R. Hackney, Licensed Surveyor as delineated on his map, a copy of which, marked Exhibit A, is hereto attached."

2. Paragraph 1 of said lease is hereby amended to read as follows:

"1. TERM. The term of this lease shall be eighteen (18) months commencing on the first day of November, 1939; subject, however, to sooner termination as herein provided. Lessee is nevertheless given and granted the option to extend the term hereof for an additional term of two (2) years ending on April 30th, 1943, by giving to lessors written notice of lessee's election so to extend the term, said notice to be given on or before March 1st, 1941."

3. Paragraph 3 of said lease is hereby amended to read as follows:

"Lessee shall pay unto lessors as rental for said premises, computed upon the tonnage of all rock and gravel removed therefrom, royalties at the rate of five and one-half (5½) cents per ton.

"For all rock shipped from said premises by railroad, royalties shall be computed and paid on the basis of weights shown by bill of lading. On all rock sold and delivered to the state or any county or municipality thereof, royalties shall be computed on the same weights upon which said state, county or municipality makes payment to lessee. In event said rock be sold on a yardage basis, the weight thereof shall be deemed to be one and one-half tons per cubic yard.* All rock removed from said premises by truck shall either be weighed on adequate scales maintained by lessee for the purpose on said demised premises or on public scales with duplicate weigh master receipts to be delivered to lessors.

"Royalties for all rock and/or gravel removed from said premises during each calendar month hereunder shall be paid on or before the 20th day of the next succeeding calendar month, payments to be made to lessors at such place as lessors may from time to time designate in writing to lessee.

"Should the royalty payments for any six months during the eighteen (18) months term of this lease be less than Two Hundred Fifty ($250.00) Dollars, lessee shall within twenty (20) days after the expiration of such six months period pay unto lessors, as a condition to the maintenance of this lease, an amount equal to the difference between the royalties paid for said six months

*or such loads as under the terms of the particular sale shall be designated for the purpose of setting an average.

and the sum of Two Hundred Fifty ($250.00) Dollars. In event lessee exercises its option to extend this lease beyond April 30th, 1941, as herein provided, then throughout the extended term hereof, in event the royalties hereunder payable for any calendar month be less than One Hundred Fifty ($150.00) Dollars, lessee shall nevertheless pay unto lessors royalties for such month in the minimum sum of One Hundred Fifty ($150.00) Dollars as a condition to its maintenance of this lease." 3½. Paragraph 13 of said lease and paragraph 3 of said amendment are hereby stricken therefrom.

4. Lessee agrees concurrently herewith to pay unto lessors the sum of Five Hundred ($500.00) Dollars in consideration of execution of this amendment and lessors in consideration of said payment hereby execute this amendment and waive any and all defaults or breaches of the aforesaid lease and the aforesaid amendment of December 31st, 1938, if any, heretofore committed by said lessee. 4½. Paragraph 5 of said lease is hereby amended by striking therefrom the words "rock and gravel" and the words "rock and/or gravel" and inserting in lieu thereof the words "paving stone."

5. Except as herein expressly modified and amended, said lease and said amendment thereto dated December 31st, 1938, shall continue and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals the day and year in this agreement first above written.

Frank M. Kuhry

L. M. Harlow

Lessors

BLARNEY STONE, INC.

By _____

By _____

Lessee.

EXHIBIT "D"

July 23, 1940

Frank M. Kuhry and L. M. Harlow
c/o Parker & Irwin, Attorneys,
724 Security Title Insurance Bldg.,
Los Angeles, California.

Attention John R. Frost.

Dear Sir and Madam:

With reference and in response to your "Notice of Termination" addressed to Henry F. Charles, Lois Pantages, Rodney Pantages and Blarney Stone Quarry, Inc. by you, dated July 20th, 1940, please be advised that our clients, Lois Pantages, Rodney Pantages, and Blarney Stone, Inc., and more particularly the latter which is in possession of the premises referred to therein, deny that there has been or is now any default or breach under the terms of the agreement and lease between it and you and under which it holds possession and the right to operate said property, and deny that said rights will terminate on the 25th day of July, 1940, or that you have any right to so declare and attempt to enforce such a termination as of said date or at any other time other than in accordance with the terms of said lease agreement, and maintain that the purported attempt on your part so to do is, as you well know, wrongful.

And you are notified that our said client will not remove from and vacate said premises and deliver same to you as demanded in said notice but will, on the contrary, continue to occupy and work said premises and remove rock and gravel therefrom, all in accordance with the terms of its said agreements with you, and will hold you strictly accountable for any loss or damage it may incur by reason of your having so wrongfully attempted and in persisting in wrongfully attempting to terminate and otherwise interfere with its full enjoyment and use of said property in accordance with the terms of said agreements.

That while said notice indicates, as was confirmed by you in our recent telephone conversation, that you are relying upon a purported breach or default occasioned or resulting from a purported assignment or sub-lease of the premises, that being the case, we hereby confirm that no assignment or sub-lease of the premises has been made by our said clients, or any of them, and while admitting that certain negotiations were carried on with George Wilmot and/or Robert Fleming under the terms of which said persons were to be permitted to enter upon the property, deny specifically that any agreement was consummated as a result of said negotiations, or that the said parties, or any of them, or any other parties, acquired any right to enter upon said property, and deny that the said transaction under consideration would have constituted, if consummated, an assignment or sub-lease of the property. And our said clients further call attention to the fact that, assuming for the sake of the argument - which, however, our said clients specifically deny to be the fact - the proposed transaction did constitute an assignment or sub-lease, that such assignment or sub-lease is not in violation of the agreement between you and our said client for the reason that assignments and/or sub-leases are no longer prohibited, paragraph 13 of the said original lease containing said restriction having been stricken therefrom and/or modified to permit assignments and/or sub-leases under and by the terms of that certain agreement dated November 20th, 1939, amending said original lease, and, further, that irrespective thereof, no notice of default in that regard has ever been given by you to our said clients as required by paragraph 4 of that certain agreement dated December 31, 1938, amending said original lease, and that the default in that regard, if any, was remedied prior to your said notice of termination in that the said proposed deal between our said client and the said Wilmot and Fleming was never consummated nor put into effect and the said Wilmot and Fleming were never permitted to enter upon said

premises or operate thereon under the terms of said tentative or proposed agreement or otherwise nor to deal with said property in any manner, and any purported rights which the said Wilmot or Fleming might have had, as hereinbefore stated, were terminated prior to your said notice of termination, thereby remedying any alleged or purported default in that regard and under the terms of said paragraph 4, likewise terminating your right to declare said agreement breached and terminated by reason thereof.

Yours very truly,

DUDLEY R. FURSE
Attorney for Lois Pantages, Rodney Pantages, and Blarney Stone, Inc.

DRF:P

EXHIBIT "E"

August 3, 1940

Frank M. Kuhry and L. M. Harlow
c/o Parker & Irwin, Attorneys,
724 Security Title Insurance Bldg.,
Los Angeles, California.

Attention John R. Frost.

Dear Sir and Madam:

With reference to and in response to your "Amended Notice of Termination" addressed to Henry F. Charles, Lois Pantages, Rodney Pantages and Blarney Stone Quarry, Inc. by you, dated August 2, 1940, be advised that our clients, Lois Pantages, Rodney Pantages and Blarney Stone, Inc., and more particularly the latter which is in possession of the premises referred to therein, refer you to our previous letter addressed to you under date of July 23, 1940 with reference to and in response to your "Notice of Termination", dated July 20, 1940, and thereby affirm to you their position in the matter as therein set out.

Yours very truly,

DUDLEY R. FURSE

DRF:F

COUNTY OF LOS ANGELES)

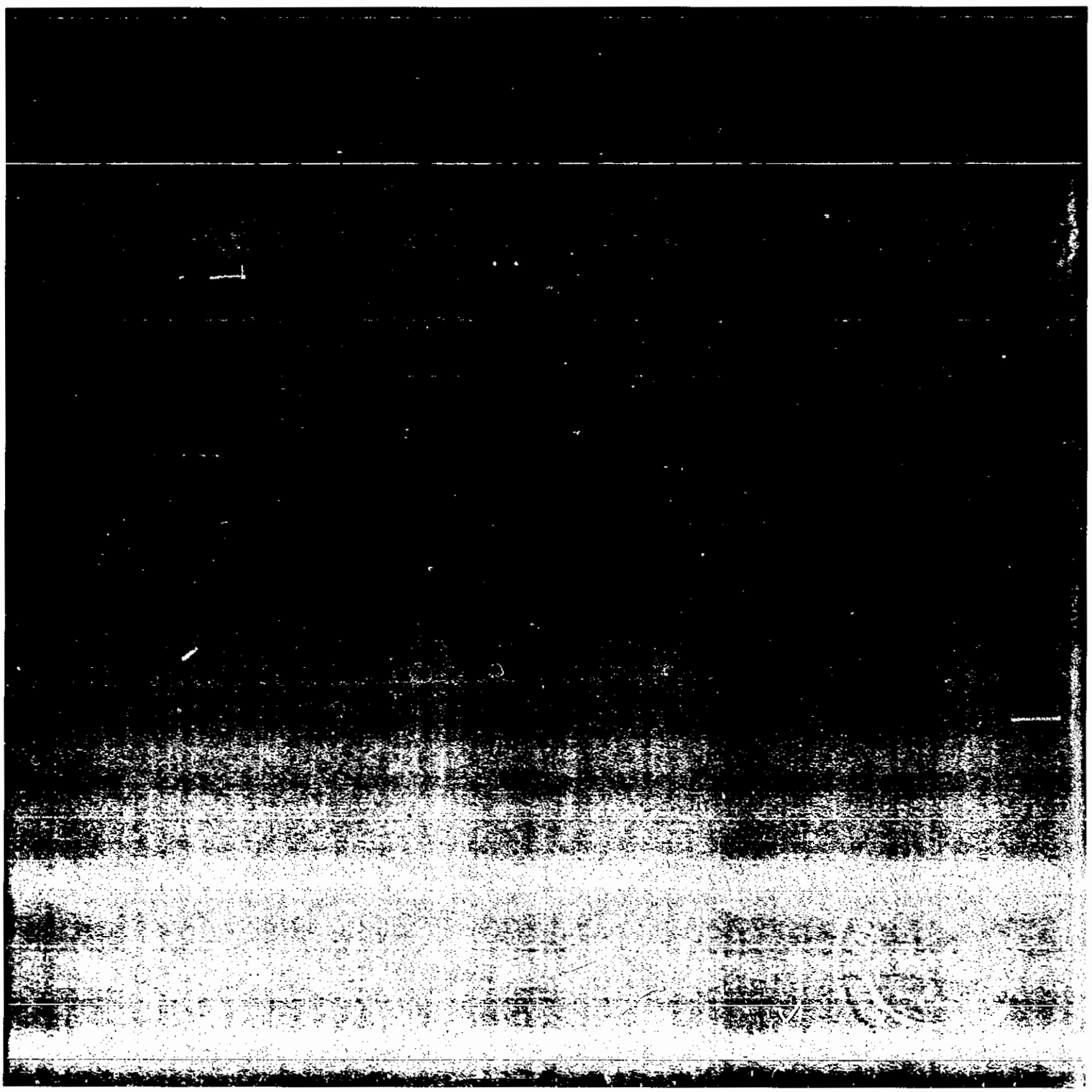
P. A. PETERS being first duly sworn deposes and says; that she is the Secretary of DUDLEY R. PURSE, Defendant, Blarney Stone, Inc., the attorney of record for the a corporation; that he has his office in the City of Los Angeles, County of Los Angeles, State of California; that Don S. Irwin is the attorney of record for the plaintiffs in the above entitled causes: that his office is located in the City of Los Angeles County of Los Angeles, State of California; that between each of the said two places there is a regular daily communication by mail: that on the 12th day of September 1940 deponent served a true copy of the ANSWER OF DEFENDANT BLARNEY STONE, INC., A CORPORATION, in the above entitled cause, which is hereunto attached, on Don S. Irwin by depositing such copy of said ANSWER OF DEFENDANT BLARNEY STONE, INC., A CORPORATION on said date in the post office at the City of Los Angeles, County of Los Angeles, State of California, properly enclosed in a stamped envelope addressed to Don S. Irwin, Attorney at Law, Security Title Insurance Building, 530 West Sixth Street, Los Angeles, California, prepaying the postage thereon.

P. A. Peters

Subscribed and Sworn to before me this

12th day of September, 1940

Notary Public in and for the County of Los Angeles, State of California.



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE.

L. M. HARLOW and FRANK M. KENNY,

Plaintiffs,

-vs-

HENRY F. CHARLES, RODNEY PANTAGES, et al,

Defendants.

No. 52195

ANSWER OF DEFENDANTS RODNEY PANTAGES AND LOIS PANTAGES

Come now the defendants, Rodney Pantages and Lois Pantages, and by way of answer to the complaint of plaintiffs on file herein, for themselves alone, admit, deny and allege as follows, to-wit:

I.

By way of answer to paragraphs IV, V, VI, VII, VIII, IX, X, XII and XIII, these answering defendants deny generally the allegations therein contained.

II.

By way of further answer to paragraphs IV, V, VI and VIII, these answering defendants admit generally that the plaintiffs did, on or about the 1st day of August, 1938, enter into a written lease with the defendant, Henry F. Charles, as alleged in paragraph V, and are informed and believe and on such information and belief allege that the property described in paragraph IV was a portion of the property described in said lease, and that the said Henry F. Charles did, as is alleged in paragraph VI, go into possession of the premises described in said lease.

RUDLEY E. PURER
ATTORNEY AT LAW
6253 HOLLYWOOD BOULEVARD
HOLLYWOOD 6253
HOLLYWOOD, CALIFORNIA

III.

By way of further answer to paragraphs VII and VIII, these answering defendants admit generally that the aforesaid lease dated August 1st, 1938, between the plaintiffs and the defendant Henry F. Charles, contained the provision set out in paragraph VII, and that on or about the 31st day of December, 1938, an amendment was entered into by and between the plaintiffs and the defendant, Henry F. Charles, consenting to the assignment of said lease to Blarney Stone, Inc., a corporation, as in effect set out in paragraph VIII.

WHEREFORE, these answering defendants pray that plaintiffs take nothing by their said action; that defendants go hence with their costs, and for such other and further relief as the Court may deem meet and proper in the premises.

Attorney for defendants, Rodney Pantages and Lou Pantages

BURNET R. PEARE
ATTORNEY AT LAW
6255 HOLLYWOOD BOULEVARD
HOLLYWOOD 6255
HOLLYWOOD, CALIFORNIA

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

P. A. PETERS being first duly sworn deposes and says; that she is the Secretary of DUDLEY R. FURSE, defendants Rodney Pantages and Lois Pantages, the attorney of record for the Pantages; that he has his office in the City of Los Angeles, County of Los Angeles, State of California; that Don S. Irwin is the attorney of record for the plaintiffs in the above entitled causes: that his office is located in the City of Los Angeles County of Los Angeles, State of California; that between each of the said two places there is a regular daily communication by mail: that on the 12th day of September 1940 deponent served a true copy of the ANSWER OF DEFENDANTS RODNEY PANTAGES AND LOIS PANTAGES / in the above entitled cause, of which is hereunto attached, on Don S. Irwin depositing such copy of said ANSWER OF DEFENDANTS RODNEY PANTAGES AND LOIS / on said date in the post office at the City of Los Angeles, County of Los Angeles, State of California, properly enclosed in a stamped envelope addressed to Don S. Irwin, Attorney at Law, Security Title Insurance Building, 530 West Sixth Street, Los Angeles, California, prepaying the postage thereon.

P. A. Peters

Subscribed and Sworn to before me this
12th day of September, 1940

Notary Public in and for the County of Los Angeles, State of California.

Civil Form 2 2-37

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ~~LOS ANGELES~~ RIVERSIDE

L. M. HARLOW and FRANK H. KUHRY,

Plaintiffs

vs.

HENRY F. CHARLES et al.,

Defendants

No. 33195

DISMISSAL

TO THE CLERK OF SAID COURT:

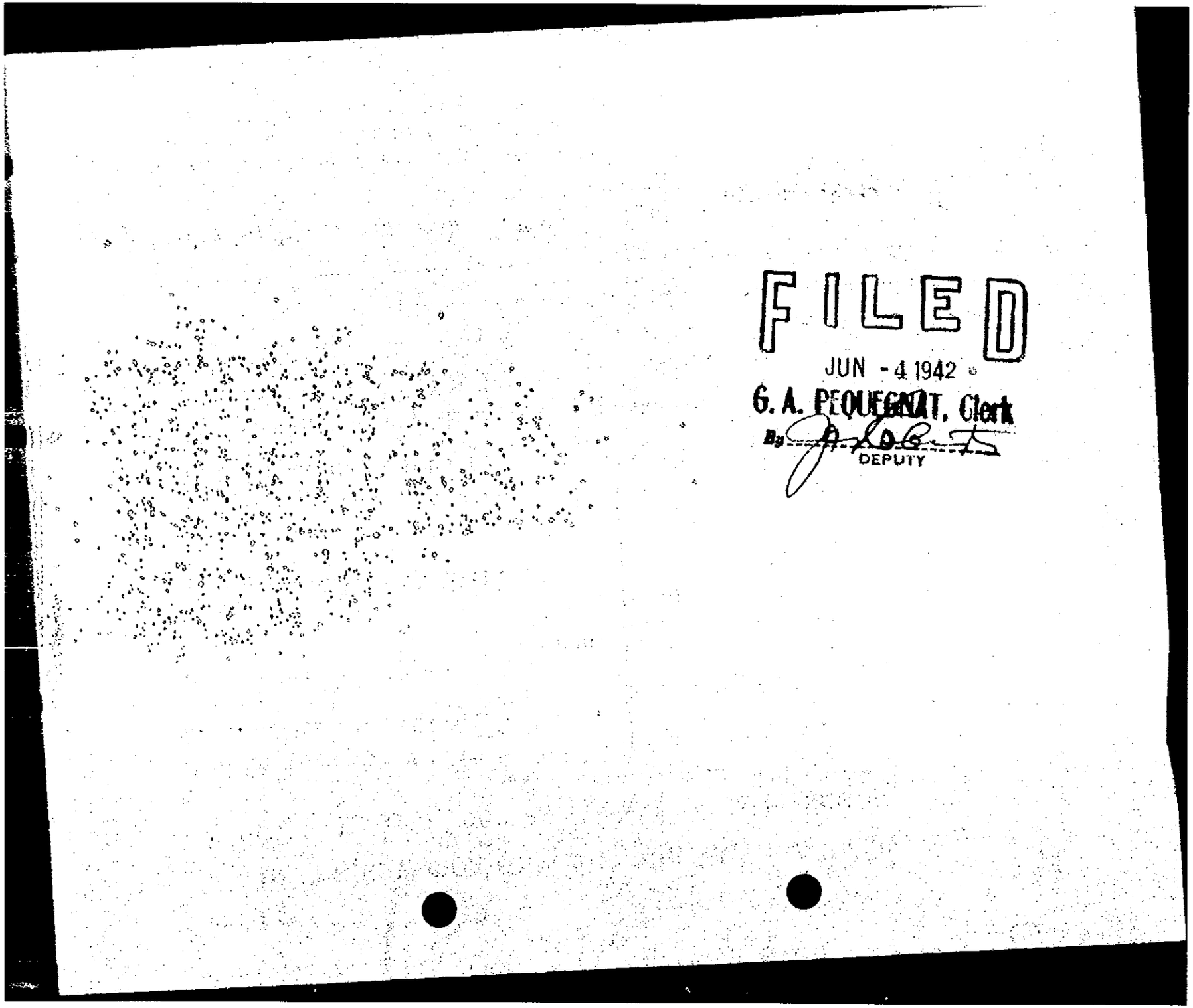
You will enter the dismissal of the above entitled action

WITH PREJUDICE

Los Angeles, Cal., May 28th, 19 42

Attorney for Plaintiffs

NOTE: Where affirmative relief is sought in Answer or Cross-complaint, Dismissal must also be signed by the attorney for the defendant.


FILED
JUN - 4 1942
G. A. PEQUEGNAT, Clerk
By
DEPUTY

Attorneys at Law
405 Citizens National Bank Building
Riverside, California

Telephone 673

Attorneys for Plaintiffs.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE.

JAMES KINCHELOE and JAKIE KINCHELOE,

Plaintiffs,

vs.

LEILAMAE HARLOW,

Defendant.

No. 42415

COMPLAINT

Plaintiffs complain and allege:

I

That defendant is a resident of the County of Riverside, State of California.

II

That on the 1st day of May, 1946, in the County of Riverside, State of California, plaintiffs and defendants made, executed and entered into a certain agreement in writing, a copy of which said agreement is marked Exhibit "A", is attached hereto, and by reference thereto is made a part hereof.

III

That under and by virtue of the terms of said agreement the defendant herein, in consideration of the covenant and agreement of plaintiffs to sell and convey said real property to defendant, promised and agreed, among other things:

(a) To pay to the said plaintiffs the sum of Five Hundred

Dollars

additional Five Hundred Dollars ($500.00) not later than June 1st, 1946; and to pay an additional Four Thousand Dollars ($4,000.00) on or before September 1st, 1946.

(b) To pay all taxes and assessments levied on or against said real property for the fiscal year 1946-1947, and subsequent years.

IV

That thereafter and pursuant to the terms and conditions of said agreement defendant did pay to the said plaintiffs the sum of Five Hundred Dollars ($500.00) upon the execution of said agreement, and did pay to plaintiffs the sum of Five Hundred Dollars ($500.00) on or about June 1st, 1946; that no part of the said sum of Four Thousand Dollars ($4,000.00) due and payable on or about September 1st, 1946, under the terms and conditions of said agreement has been paid; that plaintiffs have on numerous occasions since September 1st, 1946, demanded of defendant payment of said sum of Four Thousand Dollars ($4,000.00), but that defendant has failed and refused and still fails and refuses to pay to plaintiffs said sum or any part thereof; that no part of said sum of Four Thousand Dollars ($4,000.00) has been paid to plaintiffs and there is now due, owing and unpaid from defendant to plaintiffs the sum of Four Thousand Dollars ($4,000.00) together with interest thereon at the rate of six (6) per cent per annum from September 1st, 1946 until paid.

V

That subsequent to the execution of said agreement there was levied and assessed against said real property by the State of California and the County of Riverside, real property taxes in the sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) representing state and county taxes upon said real property for the first half of the fiscal year beginning July 1, 1946 and ending

THOMPSON & COLEGATE
ATTORNEYS AT LAW
RIVERSIDE, CALIFORNIA

Seventy-seven and 50/100 Dollars ($177.50) so levied and assessed against said real property was paid by defendant to the state of California or to the County of Riverside; that plaintiffs were compelled to and did pay on December 3, 1946, the said sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) to the County Tax Collector of the County of Riverside on account of said real property taxes so levied and assessed upon said real property; that plaintiffs have on numerous occasions demanded of defendant payment to them of the said sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) on account of said real property taxes, but that defendant has failed and refused and still fails and refuses to pay to plaintiff the said sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) or any part thereof; that no part of said sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) has been paid to plaintiffs, and there is now due, owing and unpaid from defendant to plaintiffs herein the sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) together with interest thereon at the rate of six (6) per cent per annum from December 3, 1946, until paid.

VI

That plaintiffs have performed each and every term and condition of said agreement upon their part to be performed.

WHEREFORE plaintiffs pray judgment against defendant as follows:

FIRST: For the sum of Four Thousand Dollars ($4,000.00) together with interest thereon at the rate of six (6) per cent per annum from September 1st, 1946, until paid.

SECOND: For the further sum of One Hundred Seventy-seven and 50/100 Dollars ($177.50) together with interest thereon at the rate of six (6) per cent per annum from December 3, 1946, until

-11-

THIRD: For plaintiffs' costs of suit incurred.

FOURTH: For such other and further relief as may to this court seem meet and proper.

THOMPSON & COLEGATE

By Robert O. Colegate
Attorneys for Plaintiffs.

THOMPSON & COLEGATE
ATTORNEYS AT LAW
RIVERSIDE, CALIFORNIA

STATE OF CALIFORNIA,)
) SS
COUNTY OF RIVERSIDE.)

JAMES KINCHELOE, being first duly sworn, deposes and says; that he is one of the plaintiffs in the above entitled action, that he has read the above and foregoing COMPLAINT, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein set forth on his information or belief, and as to those matters that he believes the same to be true.

James Kincheloe

Subscribed and sworn to before me
this 17th day of January, 1947.

Robert J. D. Allen

Notary Public in and for the County
of Riverside, State of California.

OF REAL ESTATE

THIS AGREEMENT, Made and entered into this 1st day of May, 1946, by and between JAMES KINCHELOE and JAKIE O. KINCHELOE, husband and wife, hereinafter called Seller, and LEILAMAE HARLOW, hereinafter called Buyer,

W I T N E S S E T H :

In consideration of Ten Dollars ($10.00) in hand paid, and other good and valuable consideration, receipt of which is hereby mutually acknowledged, and in consideration of the promises and agreements herein contained, these parties agree as follows:

(1) Seller agrees to sell and does hereby sell to Buyer, and Buyer agrees to buy and does hereby purchase the 617 acres, more or less, including all improvements thereon and rights and appurtenances thereunto belonging, situated in the County of Riverside, State of California, and described as follows, to wit:

> The South half of Block 5, the South half of Block 6, the South half of Block 7, all of Block 8, all of Block 10, all of Block 14, and all of Block 15, all situated in Section 17, Township 4 South, Range 6 West, S.B.M., containing 217 acres, more or less (and hereafter for convenience described as Parcel "A"); and,
>
> The Northwest Quarter of Section 20, the West half of the Southwest Quarter of Section 20, and the Southeast Quarter of Section 19, Township 4 South, Range 6 West, S.B.M., containing 400 acres, more or less (hereafter for convenience referred to as Parcel "B").

(2) The purchase price for said 617 acres shall be the sum of One Hundred Twenty-five Thousand Dollars ($125,000.00), divided as follows: $45,000.00 for Parcel "A" and $80,000.00 for Parcel "B"; and said sums shall be paid subject to, and under the terms and conditions hereinafter set forth in this agreement.

(3) The terms and conditions of such sale are as follows:

(a) Said property shall be sold, transferred and delivered by Seller free and clear of all liens, mortgages, deeds of trust, or other encumbrances whatsoever, subject to easements and rights of way of record; and likewise free and clear of all taxes and special assessments or levies whatsoever, including those for the fiscal year 1945-1946.

has been paid, Buyer may then begin purchase of Parcel "B", and such acquisition shall be in lots of not less than 40 acres at a time, and at $300.00 per acre. Likewise, in acquiring Parcel "B", Buyer shall start such purchases at the North line thereof and thereafter shall work back toward the South, acquiring contiguous or practically contiguous lots of 40 acres or more, at a time.

(g) Buyer may purchase 10 acres or more (but not less than 10 acres) at a time in Parcel "A" or 40 acres or more (but not less than 40 acres) at a time in Parcel "B". No time limit is set for the full, final acquisition of either Parcel "A" or Parcel "B", except that the purchase of both parcels shall be completed within four years from date hereof. It is understood that the payment of $300.00 per acre, will pay out Parcel "A" after approximately 150 acres have been taken out of said escrow, and at such time (when the sum of $45,000.00 shall have been paid) Seller shall transfer and convey to Buyer, or Buyer's order, the entire remainder of said Parcel "A", and all sums paid thereafter (above $45,000.00) shall apply on the purchase price of Lots in Parcel "B". Likewise, when the sum of $80,000.00 has been paid on Parcel "B", in addition to the $45,000.00 on Parcel "A", Seller shall transfer and convey to Buyer, or Buyer's order, proper and sufficient conveyance to the whole of Parcel "B" not theretofore conveyed.

(h) It is understood and agreed that Seller shall retain title and possession to the home place until the completion of the purchase of both Parcels "A" and "B", and that the home place shall be the last portion conveyed. By the home place is understood to mean a radius of 300 feet in any direction, from the houses where the same now stand. Seller shall have not less than 90 days from the date of final completion of the purchase, within which to deliver possession of said home place.

(i) Interest shall be paid on the unpaid balance of the total purchase price as follows: on Parcel "A", interest at 6% per annum shall begin on September 1, 1946, and shall be payable annually thereafter on September 1 of each year on the unpaid balance; interest on the unpaid portion on Parcel "B" shall begin May 24, 1947 at 6% per annum until Parcel "B" has been fully paid for, such interest being payable annually with the first interest payment one year after May 24, 1947.

property as the same is respectively sold in 10 acre or 40 acre lots, or more, as hereinabove set forth. Seller, however, shall retain possession of the portion or portions which have not been paid for and in this regard, it is contemplated that the unpaid for portions will be rented by Seller for pasture. Buyer shall have the option of possession of the whole of Parcels "A" and "B" upon paying Seller the sum of $500.00 per year, excepting the aforesaid portion around the home place.

(k) All labor or materials of whatsoever nature used or placed on either Parcels "A" or "B" shall be paid for by Buyer and become a part of, and belong to, the property, and Buyer shall save Seller harmless from any liens of any nature for labor or materials put on any portion of said property by Buyer.

(l) All payments shall go through said escrow and escrow charges shall be divided 50-50 between the parties.

(m) Buyer or Buyer's assigns shall have the right to drill for water upon any portion of the property, and to use all water produced or produqable from such well or wells as may be drilled. Any such drilling or wells shall be entirely at Buyer's or Buyer's assigns own expense and Seller shall not be held accountable in any way for any such expense and shall be saved harmless therefrom by Buyer. Buyer, or Buyer's assigns, shall have, and are hereby granted necessary and proper rights of way and easements across lands not yet taken by Buyer, to the lands which are to be served by the water which may be developed from such well or wells; and may likewsie have such right of way or easement for any water or water lines, from the present pipe line which crosses the property. In this connection it is understood that such rights of way or easements cover usage for water, water lines, ditches, light and power lines, telephone, roads or other services or public utilities.

(n) Buyer shall have the right to subdivide Parcel "A" at any time after paying the said $1,000.00, and Seller will join in such subdivision papers as may be necessary to effect a proper and reasonable subdivision of the property, but Seller shall not thereby become involved in said subdivision, but shall only join as giving his consent. In making such subdivision Buyer shall provide reasonable race restrictions, and shall in any event limit the ownership or occupation (to the full extent allowed by law) or said property to persons of the white or Caucasian race.

1946 and the $4,000.00 payable on or before September 1, 1946, shall not apply to the payment of the first acreage purchased, but shall be applied as the last $5,000 to be paid in the acquisition of Parcel "A".

(4) In the event Buyer shall default in the full acquisition of Parcels "A" and "B", then on May 1, 1950, any portion of either Parcel "A" or "B" which has not been paid for by Buyer shall automatically revert to Seller, and the escrow agency is hereby instructed to return said property at said time which shall not have been paid for.

(5) Buyer shall have the right to transfer and assign this agreement, or any portion thereof, and all rights and privileges hereunder to any person, firm or corporation of her own selection, and when so assigned such assignee or assignees shall have all the rights and privileges of the said Buyer under this agreement. Provided, however, any such assignment or assignments shall not relieve Buyer of Buyer's duties and obligations under this agreement.

(6) It is understood that there are, or may be, contingent water rights or interests inuring to the benefit of said property or to Seller with respect to said property, and as regards any such benefits or rights, Seller agrees to transfer same to Buyer for the use and benefit of said property.

(7) Buyer shall carry public liability insurance in an amount which will reasonably and properly protect both Seller and Buyer from hazards to the public.

(8) Seller also herewith transfers and assigns to Buyer any and all rights of way and easements, and right of usage or passage from the present main highway, (or any future dedicated highway) to the land covered by this agreement, and will assist Buyer in such way as Seller reasonably can, in the full establishment of a right of way to the property hereby sold. Buyer shall have the right to dedicate and lay out roads or streets on Parcel "A". In so doing, if Buyer changes the present road which serves Parcels "A" and "B", Buyer shall provide Seller with a proper and suitable road to serve Parcel "B" and the home place, until such time as both Parcels "A" and "B" are acquired by Buyer.

(9) Time is of the essence of this agreement.

(10) This contract and agreement shall be binding upon, and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year in this agreement first above written.

JAMES KINCHELOE /s/
James Kincheloe
JAKIE O. KINCHELOE
Jakie O. Kincheloe
By James Kincheloe Attorney in Fact /s/
LEILAMAE HARLOW /s/
Leilamae Harlow

COUNTY OF RIVERSIDE)

On this 13th day of May, 1946, before me, the undersigned, a Notary Public in and for said Riverside County, personally appeared JAMES KINCHELOE, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

WITNESS my hand and official seal.

(SEAL)

BERTHA M. GOBLE
Notary Public in and for said Riverside County and State
My Commission Expires July 18, 1949

STATE OF CALIFORNIA,)SS
COUNTY OF RIVERSIDE.)

On this 13th day of May in the year one thousand nine hundred and forty-six, before me, the undersigned, a Notary Public in and for said County of Riverside, State of California, residing therein, duly commissioned and sworn, personally appeared James Kincheloe personally known to me to be the person described in and whose name is subscribed to the within instrument as the Attorney in fact of Jakie O. Kincheloe and the said James Kincheloe acknowledged to me that he subscribed the name of Jakie O. Kincheloe thereunto as principal, and his own name as Attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal at my office in _____, in said County the day and year in this Certificate first above written.

(SEAL)

BERTEA M. GOBLE
Notary Public in and for Riverside County,, State of California
My Commission Expires July 18, 1949

STATE OF CALIFORNIA,)SS.
COUNTY OF RIVERSIDE.)

On this 13th day of May 1946, before me the undersigned, a Notary Public in and for said Riverside County, personally appeared Leilamae Harlow known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same.

WITNESS my hand and official seal.

(SEAL)

BERTHA M. GOBLE
Notary Public in and for said Riverside County and State
My Commission Expires July 18, 1949

FILED
JAN 20 1947
G. A. PEQUEGNAT, Clerk
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

JAMES KINCHELOE and
JAKIE KINCHELOE
Plaintiffs
vs.
LEILAMAE HARLOW
Defendant

No. 42415
AFFIDAVIT FOR ATTACHMENT

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE } ss.

JAMES KINCHELOE being duly sworn says: That he is one of the plaintiffs in the above entitled action; that the Defendant in the said action is indebted to ~~him~~ plaintiffs in the sum of FOUR THOUSAND ONE HUNDRED SEVENTY-SEVEN AND 50/100 Dollars ($4,177.50) lawful money of the United States, over and above all legal set-offs and counter claims upon an written contract for the direct payment of money, to-wit: Agreement of Sale of Real Property and that such contract was made and is payable in this State and that the payment of the same has not been secured by any mortgage, deed of trust, lien or pledge upon real or personal property.

That the sum for which the attachment is asked in the said action, that is to say: the amount of indebtedness which is above stated, is an actual, bona fide, existing debt, due and owing from the said Defendant to the said Plaintiffs, and that the said attachment is not sought, and the said action is not prosecuted, to hinder, delay or defraud any creditor, or creditors of the said Defendant, or any creditor or creditors of any or either of said defendants.

James Kincheloe

Subscribed and sworn to before me,
this 17th day of January, 1947.

~~G. A. PEQUEGNAT, County Clerk~~
~~By~~ _____, ~~Deputy Clerk~~

Robert D. Allen Notary Public in and for the County of Riverside, State of California

1M—1-47 H.N.

RECORD FOR DEPOSIT IN TRUST FUND

Auditor's Receipt No. 15843

Case No, 42415

Title of Action James Winchelow, et al vs Lukamae Harlow

Purpose of Deposit Bond

Amount of Deposit $200.00

By Whom Deposited (Owner) Thompson & Colegate

Bail in the Sum of $ _____ Fixed By _____

O.K'd by _____ Deposited with Treasurer by

_____
Deputy Clerk

STATE OF CALIFORNIA }
COUNTY OF RIVERSIDE } ss.

I, C. F. RAYBURN Sheriff of the County of Riverside, hereby certify, and return that I received the hereunto annexed writ of Attachment on the 20th day of January A.D.19 47. and by virtue of the same I did, on the 21st day of January. A.D. 19 47, attach all the right, title, claim and interest of LEILAMAE HARLOW

defendant (and each of them), of, in and to the following described real estate situated in the said County of Riverside and State of California, to-wit:

That portion of the Northwest quarter of Section 15, Township 4 South, Range 6 West, S.B.B. & M. as shown by sectionized survey of Rancho El Sobrante de San Jacinto on file in Book 1 page 8 described as follows:
Commencing at the west quarter corner of said Section 15; thence North 0° 50' 45" East along the west boundary of said Section, a distance of 881.36 feet; thence North 86° 15' 10" East 244.23 feet to the true point of beginning; thence North 87° 32' 30" East 215 feet; thence South 2° 27' 30" East 115 feet; thence North 87° 32' 30" East 115 feet; thence South 2° 27' 30" East 215 feet; thence South 87° 32' 30" West 330 feet; thence North 2° 27' 30" West 330 feet to the true point of beginning, being described as Lot 16 Block D of Assessor's Map No. 12, Riverside County Records. EXCEPT therefrom the portion thereof included in Highway as now located on and near the North line of said parcel.

Owned by the above named defendant, Leilamae Harlow.

said real estate standing on the Records of said County in the name of

was attached as follows: By filing with the Recorder of said County of Riverside, on the 21st day of January A.D. 19 47, a copy of the writ, together with a description of the property attached; and by serving on the Defendant at the above described property on the 21st day of January, 1947, a similar copy of the writ together with a description of the property attached and a Notice that it is attached and I herewith return said writ.

Dated this 24th day of January, A.D. 19 47.

C. F. RAYBURN
Sheriff of Riverside County

By John H Hull
John H Hull Deputy Sheriff

In the Superior Court of the State of California
IN AND FOR THE
County of Riverside

JAMES KINCHELOE and
JAKIE KINCHELOE
Plaintiffs
vs.
LEILAMAR HARLOW
Defendant

No. 42415

Writ of Attachment
C. C. P., 540—560

THE PEOPLE OF THE STATE OF CALIFORNIA,
To the Sheriff of the County of Riverside, GREETING:

WHEREAS, the above-entitled action was commenced in the Superior Court of the State of California in and for the County of Riverside, by the plaintiffs to recover from the defendant the sum of FOUR THOUSAND ONE HUNDRED SEVENTY-SEVEN AND 50/100 dollars ($4,177.50) lawful money of the United States, with interest at the rate of six per cent per annum from the first day of September, 1946 and with interest on the sum of $177.50 at the rate of six per cent per annum from the third day of December, 1946 on the sum of $4,000

and costs of suit, and the necessary affidavit and undertaking having been filed as required by law;

NOW, we order you, said Sheriff, to attach and safely keep all property of the defendant LEILAMAR HARLOW within said County, not exempt from execution, or so much thereof as is sufficient to satisfy the plaintiffs demand against such defendant, as above mentioned, unless such defendant give you security, by the undertaking of at least two sufficient sureties which undertaking shall have been first approved by a judge of the Superior Court of the State of California in and for the County of Riverside, or deposit a sum of money with you in an amount sufficient to satisfy such demand against such defendant, besides costs, or in an amount equal to the value of the property of such defendant which has been or is about to be attached; in which case you will take such undertaking, or sum of money, and hereof make legal service and return.

GIVEN under my hand and the seal of the Superior Court of the State of California in and for the County of Riverside, this 2nd day of January, 1947.

G. A. PEQUEGNAT Clerk.

By Lola McKinney Deputy Clerk.

SHERIFF'S OFFICE
COUNTY OF RIVERSIDE

Notice of Garnishment
C. C. P., Sec. 543

To.....

You will please take notice that all credits, or any other personal property in your possession, or under your control, belonging to the within-named defendant....., or either of them, and any debt or debts owing by you to the defendant....., or either of them, are attached in pursuance of a writ, of which the within is a copy, and you are notified not to pay over or transfer the same to anyone but myself.

Please furnish a statement.

Dated this.....day of....., 193.....

.....
Sheriff.

By.....
Deputy Sheriff.

No..... Dept.....

SUPERIOR COURT.
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

.....
Plaintiff.....
vs.
.....
Defendant.....

Writ of Attachment

.....
Attorney.....for Plaintiff.....

FILED
JAN 29 1947
G. A. BENNETT, Clerk
By.....
DEPUTY

RECEIVED
JAN 29 1947
CLERK SUPERIOR COURT
RIVERSIDE COUNTY, CALIF.
By.....
DEPUTY

14744

(This space for filing stamp only)

THOMPSON & COLEGATE
Attorney for Plaintiffs
Address
405 Citizens Bank Bldg.
Riverside, California

FILED
JAN 29 1947
G. A. PEQUEGNAT, Clerk
By [signature]
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

JAMES KINCHELOE and
JAKIE KINCHELOE
Plaintiffs.

vs.

LEILAMAE HARLOW
Defendant.

No. 42415

Action brought in the Superior Court of the County of Riverside, and Complaint filed in the Office of the Clerk of the Superior Court of said County.

SUMMONS

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETING TO:

LEILAMAE HARLOW, Defendant.

You are directed to appear in an action brought against you by the above named plaintiffs in the Superior Court of the State of California, in and for the County of Riverside, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Riverside, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiffs will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Riverside, State of California, this 29th day of January, 19 47

(SEAL SUPERIOR COURT
RIVERSIDE COUNTY)

G. A. PEQUEGNAT,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Riverside

By Lola McKinney Deputy

APPEARANCE: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk.

(OVER)

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA, County of Riverside } ss.

The undersigned being sworn, says: I am and was at the time of the service of the summons herein, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Summons on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the County of Riverside....., State of California,....., at the address and the time set opposite their names, a copy of said Summons attached to a copy of the Complaint referred to in said Summons.

Name of Defendant Served	City and Street Address	Date of Service
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

My fees for services are, $.....for.....miles actually traveled at.....cents per mile, $..... Total, $.....

(Signed).....

Subscribed and sworn to before me this.....day of....., 19.....

G. A. PEQUEGNAT,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Riverside

....., By....., Deputy

Notary Public in and for the County of Riverside, State of California

SM 8-46 - WDC - 9282

RECEIVED
JUN 20 1947
A.M. 4:30 o'clock P.M.
CARL E. RAYBURN, SHERIFF
By [illegible] Deputy

1 4744

IN THE

Superior Court of the State of California

In and for the County of Riverside

JAMES KINCHELOE and JAKIE KINCHELOE,

Plaintiffs,

VS.

LEILAMAE HARLOW,

Defendant

No. 42415

DISMISSAL

FILED

FEB 3 - 1947

G. A. FERGUSON, Clerk

By [illegible] Deputy

TO THE CLERK OF SAID COURT:

You will enter the dismissal of the above entitled action.

With Prejudice.

Riverside, Calif., February 3rd, 1947

THOMPSON & COLEGATE

By [signature]

Attorneys for Plaintiffs

NOTE: Where affirmative relief is sought in Answer or Cross-complaint, Dismissal must also be signed by the attorney for the defendant.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

FILED
FEB 5 - 1947
G. A. PEQUEGNAT, Clerk
By Lola McKinney
DEPUTY

JAMES KINCHELOE, et al,
Plaintiff
—vs—
LEILAMAE HARLOW,
Defendant

NO. 42415
ORDER FOR WITHDRAWAL OF TRUST FUND.

Thompson and Colegate, Esq's., having heretofore deposited with G. A. PEQUEGNAT, County Clerk, the sum of $200.00 for the following reason, to-wit; Cash Bond on Attachment

and said sum having been deposited with the Treasurer of Riverside County on the 21st day of January, 1947, Treasurer's Receipt No. 15843, to be held in the Trust Fund, and it now appearing that same should be withdrawn for the following reason, to-wit; Case dismissed on Feb. 3, 1947

THEREFORE;

IT IS ORDERED that the County Auditor of Riverside County draw his warrant on the Treasurer of said County for the sum of $200.00, payable to the order of Thompson and Colegate, Att'ys.at Law 405 Cit.Nat.Bank Bldg., Riverside, from the Trust Fund above mentioned.

Dated at Riverside, California,

this 4th day of February, 1947.

Judge of the Superior Court.

NOTE:
Prepare in duplicate,
File original with Clerk and
Certified copy with Auditor.

1000, 10-42 IDP

JAMES KINCHELOE et al — PLAINTIFF

VS.

LEILAMAE HARLOW — DEFENDANT

CASE NO. 42415

PAGE NO. _____

TRUST FUND RECORD

OFFICE OF COUNTY CLERK

DATE	TREASURER'S RECEIPT NO.	DEPOSITED BY	MEMORANDA	DEBIT	CREDIT	BALANCE
1-21-47	15843	Thompson & Col	Cash Bond on Attachment	200 00		200 00
2-4-47			Returned to Thompson & Colegate		200 00	———

JOHN T. ZELLMER, Ph.D.
GEOLOGICAL AND GEOTECHNICAL CONSULTING

809 West Coral Avenue, Ridgecrest, California 93555 • Phone: 375–1994, evenings

HARLOW HILLS DEVELOPMENT

QUARRY ROCK AND TALC RESOURCE STUDY

PHASE I REPORT

10/29/1984

Certified Engineering Geologist
California No. EG 1192

American Institute of Professional Geologists
"Certified Professional Geologist Scientist"
C.P.G.S. No. 6544

Registered Geologist
California No. 3808

JOHN T. ZELLMER, Ph.D.
GEOLOGICAL AND GEOTECHNICAL CONSULTING

809 West Coral Avenue, Ridgecrest, California 93555 • Phone: 375–1994, evenings

REPORT SUMMARY

As requested by Tom Dodson this preliminary investigation focused on the feasibility of developing (1) a potential rock quarry site near the east-central border of the Harlow Hills property, herein referred to as the Harlow Hills Quarry Site (HHQS), and (2) a clay deposit in the south-central portion of the property, herein referred to as the Harlow Hills Clay Site (HHCS). In addition I examined numerous rock outcrops throughout the property seeking other potential rock quarry sites. My conclusions and recommendations based on one day of field work and limited laboratory analysis are:

1) The HHQS will not produce quarry rock of quality and gradation comparable to that of the Harlow Quarry.

2) The HHQS contains sufficiently-high unit weight, unweathered, high strength rock, but blast fragmentation will be controlled by the umbitquitous discontinuities to produce an excessive amount of undersized rock that would be unsuitable for riprap. Larger fragments although of sufficient size and weight for riprap, will be weakened by the discontinuities and will fail standard riprap durability tests.

3) In general the metamorphic rock of the HHQS and adjacent areas is much less desirable for quarry operations than the igneous rock found at the Harlow Quarry and other areas.

4) At least four potentially-suitable quarry rock locations were identified on the property, all in igneous rock. Future exploration should focus on these areas.

5) The clay does not contain mineable talc minerals. Sericite, a form of the mica mineral muscovite is common, but it is not a talc mineral and probably has no commercial value.

Certified Engineering Geologist
California No. EG 1192

American Institute of Professional Geologists
"Certified Professional Geologist Scientist"
C.P.G.S. No. 6544

Registered Geologist
California No. 3808

JOHN T. ZELLMER, Ph.D.
GEOLOGICAL AND GEOTECHNICAL CONSULTING

809 West Coral Avenue, Ridgecrest, California 93555 • Phone: 375–1994, evenings

6) Some portions of the clay may be useful as fill material, but additional testing is required. Testing should include determinations of the grain-size distribution, the liquid and plastic limits and the swell potential.

7) Desiccation cracking suggests that the clay may be expansive. If confirmed by the above recommended tests, the clay may be useful as a reservoir or waste-disposal site sealant.

The report and report summary were prepared by

John T. Zellmer

John T. Zellmer

Certified Engineering Geologist
California No. EG 1192

American Institute of Professional Geologists
"Certified Professional Geologist Scientist"
C.P.G.S. No. 6544

Registered Geologist
California No. 3808

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INTRODUCTION

PURPOSE AND SCOPE

This study is a preliminary assessment to determine if either a quarry-rock site can be developed or if a mineable talc source exists at the proposed Harlow Hills development site. Specific sites were identified by the property owners for each study. In addition to these sites I was charged with seeking alternate quarry sites and alternate uses of the potential talc resource. Based on the study I have made recommendations regarding the future development of both quarry-rock sites and the potential talc resource.

LOCATION

The study area is located in Riverside County, California, east of El Cerrito and is largely contained within sections 10 and 15, T4S, R6W. The area is approximately bordered on the east by Temescal Wash and nearly bisected in an east-west direction by Cajalco Road.

QUARRY ROCK

INTRODUCTION

Several bedrock outcrops were examined to determine if the local rocks are suitable for quarrying operations, specifically for use as riprap. An area in the east-central portion of the Harlow Hills property, south of Cajalco Road had been identified by the property owners as being of special interest. This area, shown in Figure 1, is informally named in this report the Harlow Hills Quarry Site (HHQS). This section of the report discusses the HHQS and other potential quarry sites and makes recommendations regarding their exploitation potential. Although Figure 1 shows only a limited number of examined outcrops my field work encompassed nearly the entire property. Recommendations concerning future studies are discussed in a later section.

Two general rock groups comprise the outcrops examined during the field portion of the study. These are metamorphic rocks probably belonging to the Bedford Canyon formation and igneous rocks associated with the Temescal Wash quartz latite porphyry and related granitic rocks that intrude the Bedford Canyon formation. The salient characteristics of these rock groups are discussed in the following sections.

METAMORPHIC ROCKS OF THE HHQS AND ADJACENT AREAS

The HHQS is located at approximately the center of the northeast quarter (NE ¼) of section 15, about 180 m (600 ft) south of Cajalco Road. A major exposure of the rock forms the south wall of an unnamed canyon and covers an area at least 230 m (750 ft) long in an east-west direction and about 75 m (250 ft) high. Outcrops of the rock occur on

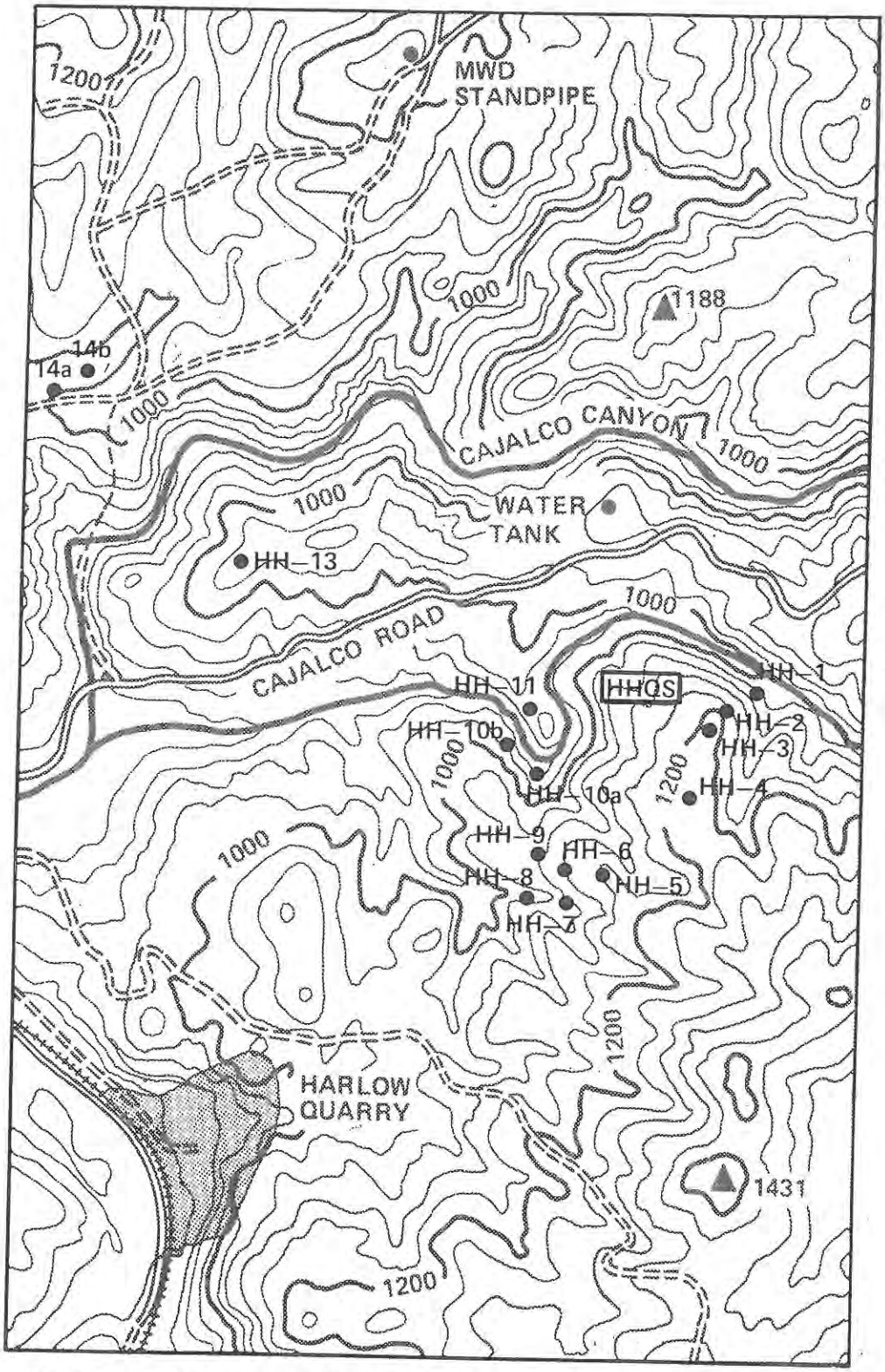

Figure 1. Index map showing location of the Harlow Hills Quarry Site (HHQS) and bedrock outcrops examined during field study portion of study. Location identifiers are keyed to Table 1.

both walls of the canyon and extend from stream level to the crest of the southern bounding ridge. Outcrops of the same rock extend at least 305 m (1000 ft) to the west of the HHQS and also occur over much of the area between Cajalco Road and Cajalco Canyon. These metamorphic rocks probably belong to the Bedford Canyon formation which is known to contain metamorphosed argillite, graywacke, quartzite and slate. Representative rock specimens collected in the field and identified using only low-power magnification are tentatively classified as quartzite and pelitic hornfels.

IGNEOUS ROCKS

Outcrops of igneous rocks were observered in the four general areas shown in Figure 1. These rocks, also identified using only low-power magnification, are tentatively classified as hornblende andesite, feldpathoidal trachyte and trachyte. They are probably associated with the Temescal Wash quartz latite porphyry and related intrusive rocks.

ENGINEERING CHARACTERISTICS

Several factors must be considered in determining the suitability of a given rock resource for use as quarry stone, especially riprap. Dominant among these factors are: state of weathering, unconfined compressive strength, unit weight and discontinuities. Exact quantification of these characteristics generally requires detailed laboratory and field studies. However, because of the limited scope of this Phase I study, I relied heavily on the field techniques proposed by Williamson (1984), reproduced as Appendix A, and standard discontinuity analysis techniques to estimate the values of the various

rock and rockmass quality designators. A summary of the estimated values are given in Table 1. The map locations are keyed to Figure 1.

State of weathering

Most of the rocks examined were sufficiently unweathered on fresh surfaces to provide acceptable quarry rock. Table 1 indicates that the metamorphic rocks generally qualified as microfresh and that the igneous rocks were sightly weathered and ranged from visually fresh to microfresh. Within the metamorphic rockmass there was oxidation and weathering along the ubitquitous discontinuity planes. Similar weathering was much less developed within the igneous rockmasses.

Unconfined Compressive Strength

The unconfined compressive strengths of the various rocks, as estimated by the Williamson (1984) method, and using fresh surfaces, exceeded 103 MPa (15,000 psi) for the metamorphic rocks and ranged from 55 to greater than 103 MPa (8,000 and 15,000 psi) for the igneous rocks. These values are generally sufficiently high for most civil engineering applications, including riprap. The higher strength rocks may however, pose difficulties in drilling and blasting operations because of their high strength, abrasion and impact resistance and energy transfer properties. The well-developed discontinuity planes should alleviate these problems but may well exacerbate the production of undersized material.

Table 1.

ROCK AND ROCK MASS QUALITY SUMMARY

Map[5] Location	Sample[1]	Weathering State[2]	Compressive[2,3] Strength (MPa) (psi)	Joints/Fractures Attitude (ave)	Spacing Range (cm)	Spacing Ave	Foliation[4]	Unit Weight[4] (g/cm^3) (lb/ft^3)	Rock Type
HH-1	HH-R-1	Microfresh to visually fresh	>103 >15,000	N40°W 40°S	5-30	10	N46°W 44°N	2.58 161	Quartzite
				N40°E 90°	5-70	20			
HH-2	NC	Microfresh to visually fresh	>103 >15,000	N70°E 50°S	50-200	>100	N10°E 80°E	ND	Quartzite
				N10°E 80°E	25-50	35			
HH-3	NC	Microfresh to visually fresh	>103 >15,000	N70°E 50°S	50-200	>100	N20°W 50°S	ND	Quartzite
				N10°E 80°E	25-50	35			
HH-5	HH-R-5	Microfresh to visually fresh	55-103+ 8,000-15,000+	N55°W 77°W	50-100	70	None	2.74 169	Hornblende andesite
				N60°E 67°E	1-20	10			
HH-8	NC	Microfresh to visually fresh	>103 >15,000	N15°E 40°W	<1-20	5	ND	ND	Quartzite
				N50°E 90°	1-20	3			
				N10°E 15°W	10-50	20			
HH-9	NC	Microfresh to visually fresh	55-103+ 8,000-15,000+	N40°E 85°S	1-100	>20	None	ND	Hornblende andesite

[1]NC - None collected.
[2]Based on method of Williamson (1984) using fresh sample face.
[3]Estimated unconfined compressive strength using fresh sample face.
[4]ND - Not determined.
[5]See Figure A.

Map[5] Location	Sample[1]	Weathering State[2]	Compressive[2,3] Strength (MPa) (psi)	Joints/Fractures Attitude (ave)	Spacing Range (cm) (in)	Spacing Ave	Foliation[4]	Unit Weight[4] (g/cm^3) (lb/ft^3)	Rock Type
				N40°E 85°N	1-100	>20			
				N50°W 44°E	100+	100+			
				N5°E 90°	≈20	20			
HH-10a	HH-R-10a	Microfresh	>103 >15,000	N60°E 30°S	20-50	30	ND	2.60 162	Peletic hornfels
				N70°E 65°S	3-20	10			
				N45°E 74°N	Intermittent				
HH-10b	NC	Microfresh	>103 >15,000	N60°E 90°	--	3	N70°W 35°N	ND	Peletic hornfels
				N60°E 75°S	--	5			
				N70°W 35°N	--	5			
				N10°W 70°E	--	5			
HH-11	HH-R-11	Microfresh to visually fresh	55-103+ 8,000-15,000+	N40°E 27°E	20-100+	--	None	2.52 157	Feldspathoidal trachyte
				N55°E 55°W	--	100+			
				N70°W 30°S	--	100+			
				N10°E 70°E	--	100+			
				N10°E 70°W	--	100+			

Map[5] Location	Sample[1]	Weathering State[2]	Compressive[2,3] Strength (MPa) (psi)	Joints/Fractures Attitude (ave)	Spacing Range (cm) (in)	Spacing Ave	Foliation[4]	Unit Weight[4] (g/cm^3) (lb/ft^3)	Rock Type
HH-13	HH-R-13	Microfresh to visually fresh	>103	N80°E Vert	2-5	3	ND	2.61 163	Quartzite
				N50°W 47°W	1-10	3			
				N70°E 60°N	1-5	3			
				N30°E Vert	2-10	3			
HH-14a	HH-R-14	Microfresh to visually fresh	55-103+ 8,000-15,000+	N15°E 35°W	--	100+	None	2.66 166	Trachyte
				N45°W 57°E	--	≈100			
HH-14b	NC	Microfresh to visually fresh	55-103+ 8,000-15,000+	N60°E 70°N	20-50	30	None	--	Trachyte
				N60°W 35°W	20-50	30			

UNIT WEIGHT

For use as riprap most authorities recommend that the rock have a unit weight of at least 2.5 to 2.6 g/cm^3 (156-162 lb/ft^3) with at least 2.6 g/cm^3 (162 lb/ft^3) generally preferred. All of the rock samples collected exceed the minimum recommended unit weight.

Discontinuity Analysis

Overview

Rock outcrops at the HHQS and at several other locations (Table 1, Figure 1) were examined to determine the orientations and densities of rockmass discontinuities. These represent planes of weakness within the rockmass along which the rockmass has broken or will tend to break. The discontinuities are of three types: joints, fractures and foliation-plane partings. The average attitude, that is the orientation of the planes, was measured using a Brunton compass and the spacings between the planes visually estimated. Detailed discontinuity analyses require measuring the attitude of each plane and the space between adjacent planes. This approach was beyond the scope of the study and is probably unnecessary for rock quarry applications. As indicated in Table 1, the discontinuity spacings within the metamorphic rock masses ranged from less than 1 cm to about 100 cm and averaged about 10 cm. Discontinuity spacings within the igneous rockmasses were generally more favorable for quarry operations, ranging from 1 cm to greater than 100 cm and averaged over 20 cm with greater than 100 cm very common.

Typical characteristics of the discontinuities in the metamorphic rockmasses are shown in Photos 1, 2, 3, and 4. Photo 1 shows several of the larger-scale discontinuities that are visible from Cajalco Road a distance of about 180 m (600 ft). At least four major discontinuity orientations can be identified on the photo: nearly vertical, nearly horizontal, dipping about 30° to the west (right) and dipping about 60° to the east (left). Selected discontunities are drawn on the photo overlay. At the outcrop scale, photos 2, 3, and 4, it can be seen that the discontinuity planes are ubitquitous and well developed. Selected discontinuities are also drawn on the photo overlays. In addition to the planar discontunities, pervasive conchoidal fractures occur through-out many of the metamorphic rockmasses.

Discontunity planes observed within the igneous rockmass outcrops were also well developed but were generally less pervasive and more widely spaced than those of the metamorphic rockmasses. Photos 5 and 6 show a typical igneous-rock outcrop. Note that only a few discontinuity planes are visible within the outcrop and that the rock naturally breaks into much larger and more uniform-shaped blocks than does the metamorphic rock.

Effect of Discontinuity Planes on Quarry Operations

Rockmass discontinuities have major effects on the blast fragmentation characteristics of rock. In general, rockmasses with closely-spaced discontinuities at several orientations will produce much smaller-sized rocks on blasting than will a rockmass with only a few

Photo 1 Photograph of HHQS taken from Cajalco Road. Overlay shows several of the major discontinuity planes that occur within the rockmass. The planes are ubitquitous and much more closely spaced than suggested by this photograph. View is to the south from a distance of about 200 m (650 ft)

Photo 2 Photograph of metamorphic-rock outcrop at HHQS showing several discontinuity planes. Close inspection of the photograph reveals that the planes are closely spaced and at at least three intersecting orientations. Hammer is about 0.3 m (1 ft) long.

Photo 3 Photograph of metamorphic-rock outcrop at sample location HH-10a (Figure 1). Discontinuity planes at this location are not as closely-spaced as at other locations, but are nevertheless unacceptably close for quarry operation. Hammer is 0.3 m (1 ft) long.

Photo 4 Photograph of conchoidal fracturing and closely-spaced discontinuity planes. Conchoidal fracturing is common throughout the metamorphic rock.

Photo 5 Photograph of igneous-rock outcrop at location HH-5 (Figure 1) showing spacings and orientations of discontinuity planes. Hammer is 0.3 (1 ft) long.

Photo 6 Photograph of Harlow Quarry. Several discontinuity planes are visible within the quarry face. Note the sizes and shapes of the stockpiled rocks that result from the interaction of the discontinuity planes and blasting technique. This would not be possible in the metamorphic rock.

discontinuities. Figure 2 shows two simplified characterizations of rockmass discontinuity distributions. Cube A shows closely-spaced, that is high density, discontinuities, and Cube B shows widely-spaced, low density, less well developed discontinuities. To exemplify the effect of discontinuity density on blast fragmentation assume that Cube A is constructed of a child's wooden blocks and that Cube B is constructed of larger-sized wooden blocks. To model the effect of mineral-sealed or discontinuous planes of weakness, assume that several of the blocks are glued to one or more of the adjacent blocks. If a small charge of explosive is placed at the center of each cube and detonated, Cube A would produce a pile of small-sized blocks and Cube B would produce a pile of larger-sized blocks. The same result occurs when blasting a rockmass, that is, closely-spaced discontinuities generally produce small-sized rock and widely-spaced discontinuities generally produce larger-sized rock.

The metamorphic rock of the HHQS and adjacent areas is unlikely to produce riprap-quality rock because of the closely-spaced discontinuities that occur at several orientations. These rocks are comparable to Cube A of Figure 2 and will produce an excessive amount of undersized material. Even if larger-sized material can be produced by specialized blasting techniques the material will still contain the discontinuity planes and will therefore be unacceptably mechanically weak and susceptable to rapid degradation. Furthermore, the rock would be in direct competition with the much higher-quality rock found in several existing quarries and potential quarry sites in the area.

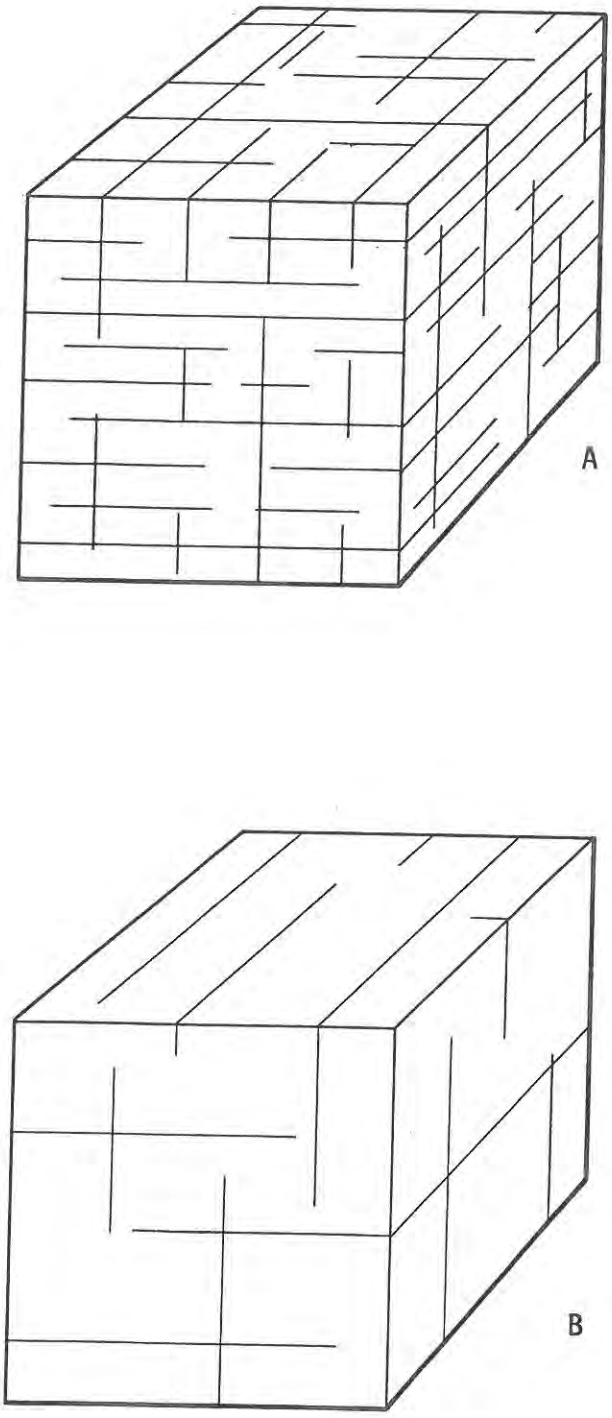

Figure 2. Diagramatic representation of discontinuities in rock. Block A discontinuity density is similar to that observed in the metamorphic rock and Block B is similar to that of the igneous rock.

The igneous rocks observed at the property are, in general, far superior in quality to the metamorphic rocks for use as riprap, largely because of the lower discontinuity density. The igneous rock sites should produce rock comparable to that currently produced at the Harlow Quarry.

Recommendations

Metamorphic rocks of the HHQS and adjacent areas

Further exploration and development plans should be abandoned for the following reasons:

(1) The rockmass will not produce acceptable quality and sized riprap.

(2) Produced rock would be mechanically weak and susceptable to rapid degradation in size and quality.

(3) The rock would be in direct competition with higher quality rock from other quarries.

The rock may be acceptable for other uses such as fill material or aggregate, especially if the discontinuity plane weathering does not continue at depth.

Igneous Rock

The outcrops of igneous rock that were examined indicate a potential for developing new quarry sites. Using simplified field tests, the rock and rockmass qualities appear to meet the minimum requirements for use as riprap and other applications. Additional exploration, resource determinations and quality studies are justified if the property owners desire to pursue quarry-rock development. A summary of recommendations for further studies is given in a later section.

ASSESSMENT OF POTENTIAL QUARRY LOCATIONS

Introduction

Four areas identified as having quarry rock resources are shown in Figure 3. The boundaries of the igneous rock areas are estimated from observed outcrop locations and therefore must not be considered as exact. The following sections briefly discuss each of the potential areas, based on the limitations of this preliminary study.

Area 1

Igneous-rock outcrops and detritus occur at several locations in Area 1. The igneous rock appears to be in either fault or intrusive contact with the metamorphic country rock and probably extends to the south, east and southeast, underlying the higher terrain The rock appears to be of riprap quality and the rockmass discontinuities should enhance blast fragmentation. Development however, may eliminate several view lots and be aesthetically displeasing.

Area 2

Area 2 occupies the center of a small oxbow in the unnamed canyon south of Cajalco Road. The igneous rock outcrop area is small and surrounded by metamorphic rocks. Its shape suggests that it may be a dike, possibly associated with the larger intrusion of Area 1. Although the rock quality and discontinuities are favorable, the location

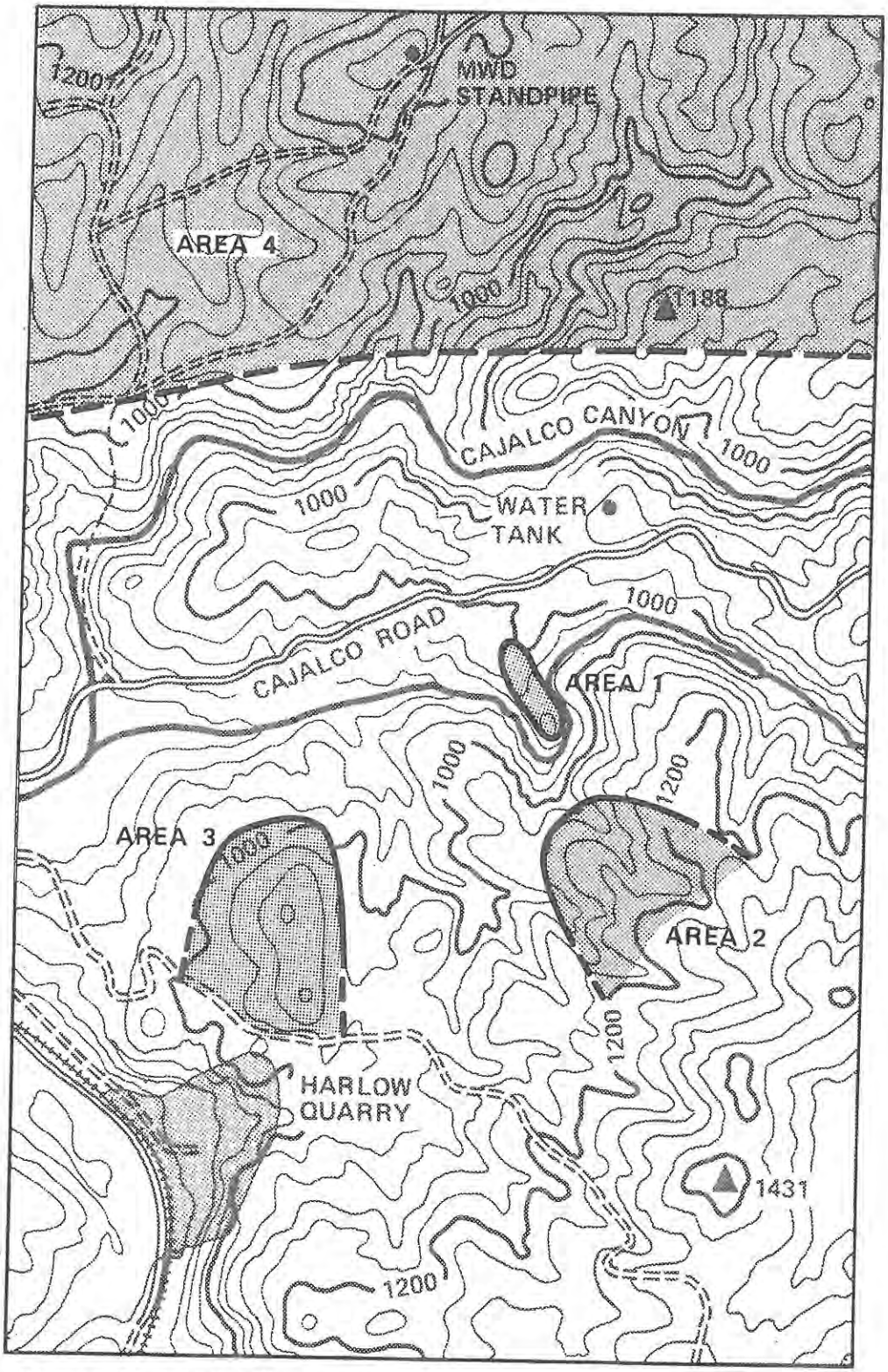

Figure 3. Approximate locations of potential quarry sites in igneous rock.

and apparent small size of the resource argue against further consideration. Major problems, in addition to size, include surface and ground-water interference with quarry operations, flood hazard, riparian disruption and view lot aesthetics. The formation of a small lake following the termination of quarry operations may however, mitigate some of these problems.

Area 3

Area 3 is immediately north of the Harlow Quarry and includes the elongate, north-south trending hill. Granitic detritus on and adjacent to the hill suggests that it is composed of granitic rock. The granitic rock exposed in the Harlow Quarry probably extends northward and underlies Area 3. Because of its proximity to a known, high-quality resource, i.e. the Harlow Quarry, Area 3 deserves additional study. Negative factors may include potential loss of view lots and additional aesthetic degradation of the area.

Area 4

Area 4 includes much of the region north of Cajalco Road. Igneous rock apparently belonging to the Temescal Wash quartz latite porphyry and suitable for quarry operations crops out extensively. Existing roads provide excellent access to much of the area. These factors justify additional study. Negative factors include:
potential surface and ground-water interference if development occurs in one of the canyons, potential loss of view lots, aesthetic degradation and adequate offset from the MWD Lower Feeder to prevent blasting-related damage.

CLAY RESOURCE

INTRODUCTION

The clay resources is located approximately at the center of section 15 and borders the northeast edge of the Harlow Quarry (Photo 7, Figure 4). The scope of the study included determining if the clay represented a minable talc source and if not to determine if the clay could serve some other useful purpose. The clay, or more properly soil, has been extensively worked by heavy equipment and much of the natural topography and stratigraphy disrupted. Most of the soil appears to have developed in situ by weathering of metamorphic bedrock. Along the western edge of worked area the soil probably developed in locally-derrived decomposed granite. Five samples were collected at the locations shown in Figure 4. The following sections briefly describe the physical and engineering characteristics of the soil, comment on the CHJ Inc. trench logs and make recommendations regarding the soil's possible exploitation.

PHYSICAL CHARACTERISTICS

The soil apparentely developed from two different sources, one from granitic rock or detritus and the other from metamorphic roc . The soil from granitic parent rock occurs along the west side of the clay pit. Where exposed in an exploration trench on the east flank of the north-south trending elongate hill, a sample, HS-1, was taken from soil developed in decomposed granite. The inclusion of both well rounded and angular mineral grains suggests that the parent material was probably of two sources, transported granitic detritus and in situ weathering of granite rock. Quartz and granite lithic fragments dominate the sample but ferromagnesian minerals are common in the finer sieve fractions.

The remaining four samples, HS-2, HS-3, HS-4 and HS-5 developed exclusively from metamorphic parent rocks. Quartz grains and

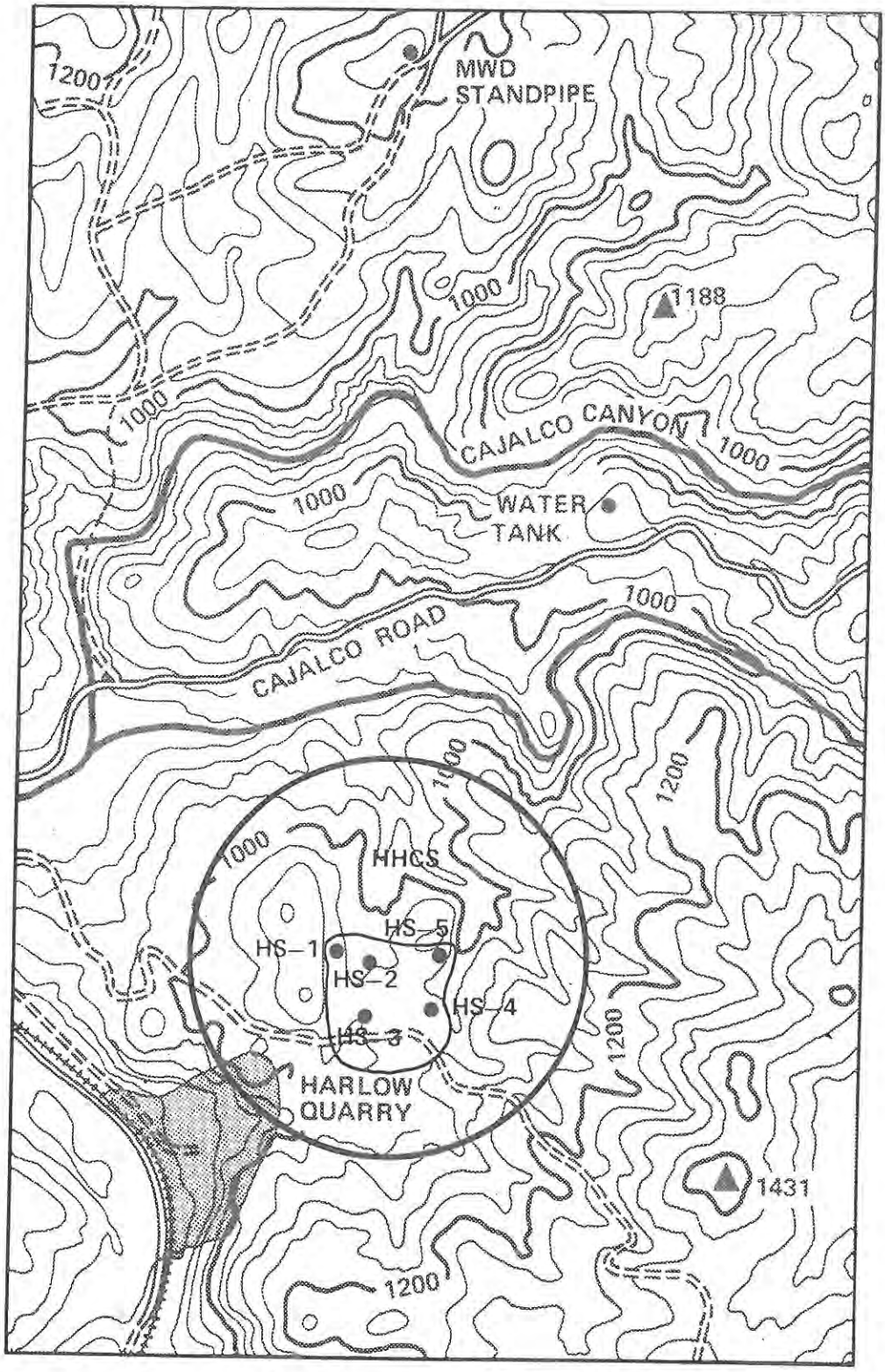

Figure 4. Approximate soil sample locations.

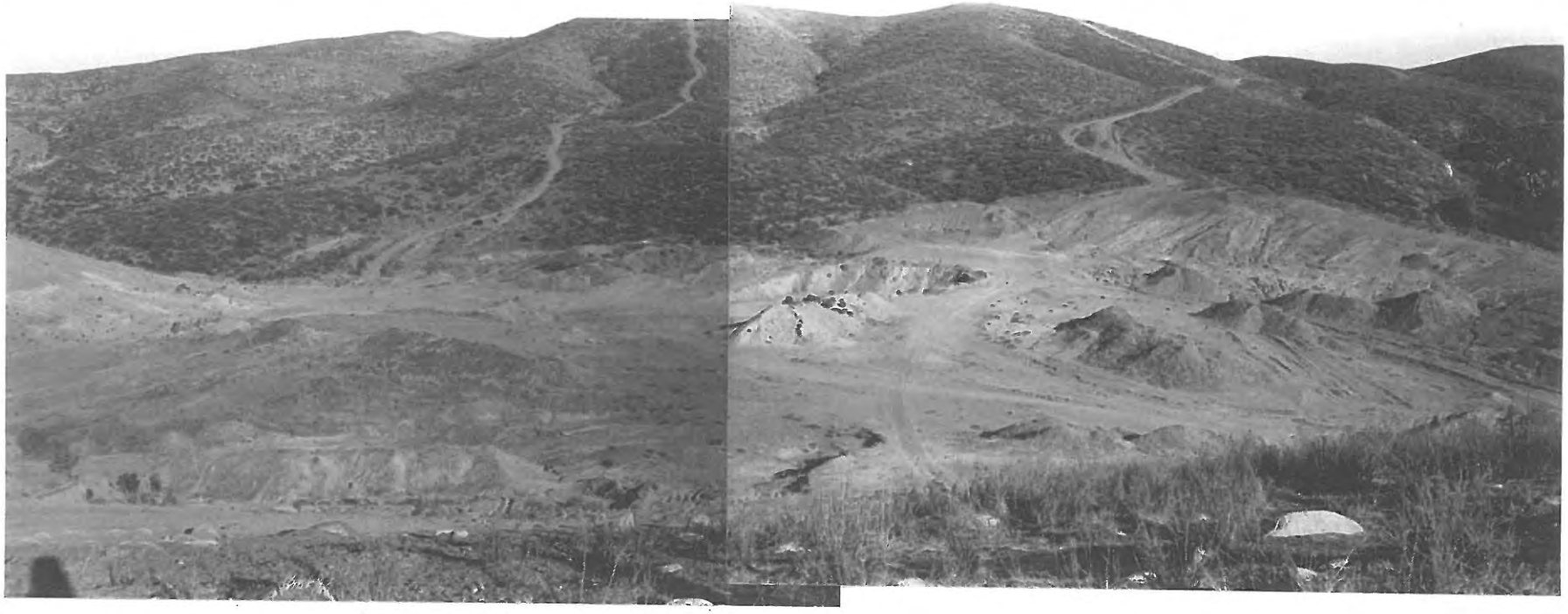

Photo 7 Panorama of clay resource area. The zone of highly-weathered metamorphic rock is probably at least 3 m thick over much of the disrupted area shown in this photograph. Total volume would therefore be about 130,000 m^3 (176,000 yd^3). Volume verification would require test borings or pits and additional surface measurements.

metamorphic lithic fragments are the dominant constituents under low-power magnification, but the petrographic microscope revealed an abundance of sericite. Sericite is a mica mineral that is common in metamorphic rocks and is also common as an alternation product. At all of the sample locations weathered metamorphic rock was exposed at the surface. Sample HS-3 was collected from an excavation near the center of the clay pit. The excavation was about 2 m (6 ft) deep and revealed a continous section of weathered metamorphic bedrock. This, as well as the other exposures, indicate that the clay developed almost exclusively from the in situ weathering of metamorphic bedrock.

Typical commercial talc minerals were not observed in the samples and the area is devoid of talc-producing rock types. The clay therefore, is not a viable talc resource and it is unlikely that any minable talc occurs on the property.

ENGINEERING CHARACTERISTICS

Analysis of the engineering characteristics of the soil was limited to field observations and partial classification according to the Unfined Soil Classification System (USCS). The classification was intended to be approximate and therefore the analysis procedures did not fully conform to ASTM standards. Accurate classification of the soils was beyond the scope of the study, and would require specialized laboratory testing. The soil classifications and typical engineering properties are given in Table 2. Based on the classifications and field observations it appears that some of the soil may be useful as a compacted fill material, especially that derived from granitic sources. Most of the soil however, is apparently derived from altered metamorphic bedrock and is probably less suitable. Desiccation cracking suggests that some of the soil may be expansive and therefore useful as a sealant for waste disposal sites or reservoirs. Further laboratory testing will be required to confirm the quality of the soils. Testing should include USCS classification, liquid limit, plastic limit, and swell potential.

Table 2. Soil Classification and Typical Engineering Properties.

Sample	Classification Symbol *	Typical Composition	Permeability	Shearing Strength	Compressibility	Workability
HS-1	SM	Silty sands, poorly graded sand-silt mixtures	Semipervious to impervious	Fair	Low	Fair
HS-2	SM					
HS-3	–	Altered bedrock	Prob impervious	Prob good	Prob low	Prob good
HS-4	SC	Clayey sands, poorly graded sand clay mixtures	Impervious	Good	Low	Good
HS-5	SC					

* Unified Soil Classification System

CHJ INC SOIL REPORT

Although not charged with reviewing the CHJ Inc soil report I have a few concerns regarding some of the trench logs. The location map does not provide accurate locations of the trenches which makes direct comparisions with my observations and recollection difficult. Nevertheless some of the logs, i. e., Nos. 3, 4 and 5 do not conform with my expectations. These logs indicate that decomposed granite is exposed near the surface in areas where I would expect the log to reveal weathered metamorphic rock such as in implied in log No 7. Bear in mind however, that my expectations are based on the general locations of bedrock outcrops and not a detailed knowledge of the local geology, and actual trench locations. I disagree, however with log No 4 from an excavation in the clay pit. If the location shown is reasonably accurate, the log should indicate silty sand to clayey sand grading into weathered metamorphic bedrock. The material described in log No 4 probably occurs or along the western edge of the clay pit, but not where the log is shown. Log No 3 is also promblematical. Tom Dodson and I observed evidence of a excavation near the location indicated for trench No 3. The excavation, if my memory serves me correctly, was in metamorphic rock, although a few granitic boulders were observed in the general area. The log indicates decomposed granite.

RECOMMENDATIONS

The clay does not represent a mineable talc source and no other commerericially-abundant minerals were observed. Therefore, I recommend that mineral resource studies within the clay be discontinued.

The clay may be useful as engineered fill or possibly as a reservoir or waste site sealant. Laboratory testing will be required to verify either of these potential uses. The following tests should be conducted: grain-size analysis, liquid limit, plastic limit and swell potential.

RECOMMENDATIONS FOR FUTURE STUDY

QUARRY ROCK

The decision to quarry rock within any of the four areas identified in an earlier section will be affected by the local geology, current development plans, economics, aesthetics and other considerations. Should the property owners choose to continue with either exploration or quarry development, I recommend the following generalized exploration plan and techniques. The costs of following phases will largely be determined by the total area studied and the level of detail requested. Phase II would provide most, if not all of the information required to begin initial quarry development. Phases III and IV may not be necessary, but would provide extremely useful data.

PHASE I

Phase I is the feasability study that is addressed in this report.

PHASE II

Phase II includes determining the bounderies of all four identified sites or selected potential quarry sites and the collection of additional rock and rockmass characterization data. This will involve geologic mapping to differentiate between areas underlain by igneous and metamorphic rocks and to identify faults and other geologic structures that may affect the distribution or quality of the rock and rockmass. In conjuction with the geologic mapping will be geotechnical field, and possibly laboratory studies, to better quantify states of weathering, unconfined compressive strengths, unit weights and discontinuities. This phase would probably require about one man-week of effort to complete the field work if all four potential quarry areas are studied.

If unconfined compressive strength, abrasion resistance or other specialized laboratory tests are required, e.g. by U. S. Army Corps of Engineers standards, they must be contracted to an appropriate testing service. The other rock and rockmass characteristics, e.g. weathering state, unit weight and discontinuity analysis, can be determined by the same field and laboratory techniques used during Phase I.

PHASE III

Phase III is an optional seismic study of sites found to be acceptable for quarry development during Phase II. The seismic study, in conjunction with existing soil survey data and possibly with verification drilling, will provide estimates of overburden stripping-depths to sound rock, but more importantly will provide information regarding the quality of the rock and rockmass at depth. Although this phase could be eliminated because of cost considerations or in favor of drilling studies (Phase IV) or immediate quarry development, I recommend that at least a limited seismic survey be conducted prior to quarry development to better define and characterize the resource.

PHASE IV

Phase IV is an optional drilling program to accurately determine overburden stripping depths and rock quality at depth. Because of the expense, drilling should be limited to specific areas planned for quarry development. Two analysis techniques can be used: rock-core analysis or drill cuttings. Rock cores provide the greatest amount of data but require expensive diamond-core-drilling techniques. The main advantages are intact samples that preserve rockmass discontinuity data. Drill cuttings can be obtained using less expensive rotary or cable-tool drilling equipment. The disadvantages are that

only rock chips are available for observation and no discontinuity data can be obtained. Alternatively, drill cuttings obtained during blast hole drilling can be examined to monitor rock quality prior to blasting. This however, would be limited to the quarry development and production operations rather than exploration.

CLAY

The clay has no value as a talc source and no other commerically-mineable minerals were observered. Therefore, additional mineralogical studies are not recommended. The clay, however, may be useful as a fill material or sealant. To determine the suitability for either, grain-size analyses, liquid limits, plastic limits and swell potentials should be determined by laboratory testing.

APPENDIX A

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Unified Rock Classification System[1]

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ABSTRACT

The Unified Rock Classification System (URCS) provides a reliable and rapid method of communicating detailed information about rock conditions pertinent to design and construction of civil engineering projects. The URCS consists of four fundamental physical properties: 1) weathering, 2) strength, 3) discontinuities and 4) density. A general assessment of rock performance is then based on a grouping of the four key elements to aid in making engineering judgments. These individual properties are estimated in the field with the use of a hand lens, a 1-pound ballpeen hammer, a spring-loaded "fish" scale and a bucket of water. Each property is divided into five ratings which convey uniform meaning to engineering geologists, design engineers, inspectors and contractors as well as contract appeal board members.

Subjective terminology, such as "slightly weathered, moderately hard, highly fractured and lightweight," varies widely in meaning, depends on individual and professional experience, and cannot be quantified with any reliability. The URCS is not intended to supplant existing geologic classifications but it does offer a suitable alternative to ambiguous descriptive terminology.

INTRODUCTION

The Unified Rock Classification System (URCS) allows rapid preliminary assessments of rock conditions by simple field tests that establish basic engineering properties. The URCS is useful for all earth-associated design and construction projects. Pertinent natural conditions related to design parameters are documented in a convenient manner which can be understood at a glance.

The URCS is engineering shorthand which can be used to convey maximum information. With the URCS, rock is classified in simple, easily understood terms that convey evidence of strength and behavior. The URCS terms convey uniform meaning to engineering geologists, design engineers, inspectors, contractors and contract appeal board members.

Geotechnical field reports or drill logs sometimes lack uniformity of notation to assure that sufficiently identical interpretations will be made by designers. A working classification system based on simple field tests which can be refined by laboratory test results can provide this needed uniformity. The URCS is not intended to replace existing geologic classifications but rather to supplement them with engineering design parameters.

The URCS was conceived in 1959 in simplified form in conjunction with investigations and explorations for design and construction of major flood-control dams by the Portland District of the U.S. Army Corps of Engineers. Use of the URCS was found to materially increase efficiency and produce

[1] Modified by the Symposium editor from papers written by Williamson (1978, 1980).

reliable rock information that resulted in successful design and construction as well as post-construction evaluations. The URCS in its present form dates from 1975 and is used by the U.S. Forest Service in Region 6 and parts of Regions 1 and 5. It has been found to be a reliable method of communicating rock conditions (including those in quarries, retaining walls, and extensive rock excavations) for the design of forest access roads.

PURPOSE AND NEED

The purpose of the URCS is to establish a means of making rapid initial assessments of rock conditions related to design and construction by simple field tests that permit direct estimation of natural strength parameters. The purpose of this report is threefold: 1) to present a rock classification for use in engineering geology and geotechnical investigations, 2) to outline field procedures that require simple equipment, and 3) to establish the relationship between the classification and design and performance.

Experienced professionals who deal with rock can, and often do, apply the principles of rock mechanics without any formally accepted rock classification. Organizations comprised of employees of many experience levels commonly have a designated rock classification system. Rock information is frequently collected in the field by geologists but utilized in design by engineers. The URCS is intended to supplement, not supplant, existing geologic classifications; its specific goal is to provide a means by which the inherent confusion of subjective terminology can be eliminated when applied in civil engineering.

Classification is not the chief aim of geotechnical investigations, but a uniform working classification is necessary to effectively supply the needs of a large organization of diverse professional disciplines. The assertion that there is no need for another classification is easily discounted with the statement that a classification is always needed until one is found that meets general approval and acceptance and is used.

The following statements are unfortunately still true: "There are as many classifications as there are geologists," and "No two geotechnical investigators will give the same name to the same rock." Because of the number of geotechnical personnel working in the field, it is vital that some uniformity of data exist. Even now, when one reads geotechnical reports, drilling logs, or contract documents, it is not possible to be sure that two different geotechnical specialists who are discussing the same rock are describing sufficiently identical design characteristics. A working classification requires uniform symbols, abbreviations, notations, and definitions that are established to be acceptable procedures.

The URCS fulfills basic needs of any classification:

1) Definitions are developed by simple field tests.
2) Information is presented in simple, understandable, non-technical terms.
3) Field conditions are related to design and construction.
4) Notations are flexible to scale of sample, outcrop or large excavation area and are appropriate to evaluation.
5) Collected data are verifiable, reproducible and independent of experience but not training.
6) The system is useful to all levels of experience.
7) The system allows immediate assessment, both directly and on notes or documents.

BASIC ELEMENTS

The URCS consists of four basic elements which are major physical properties of rock material and are related to design and construction. The elements are: 1) degree of weathering, 2) estimated strength, 3) discontinuities or directional weaknesses, and 4) unit weight or density.

By establishing limiting values of these four basic elements by using uniform field tests and observations, terminology, notations, and abbreviations, the URCS provides a means for recording and communicating reliable indications of rock properties and performance. The URCS permits a useful estimate of compressive strength, permeability and shear strength—the three primary properties of rock masses. When combined with other geotechnical information (stress history and water table location), the URCS permits an estimate of rock performance such as foundation suitability, excavation methods, slope stability, material use, blasting character and water transmittal.

The equipment used for the field tests and observations is simple and available: one's fingers, a 10-power hand lens, a 1-pound (0.5-kg) ballpeen hammer, a spring-loaded "fish" scale of the 10-pound (5 kg) range, and a bucket of water. Fingers are used in determining the degree of weathering and the lower range of strength. The hand lens is used in defining the degree of weathering. The ballpeen hammer is used to estimate the range of unconfined

DEGREE OF WEATHERING

REPRESENTATIVE		ALTERED	WEATHERED			
			>GRAVEL SIZE		<SAND SIZE	
Micro Fresh State (MFS) A	Visually Fresh State (VFS) B	Stained State (STS) C	Partly Decomposed State (PDS) D		Completely Decomposed State (CDS) E	
UNIT WEIGHT RELATIVE ABSORPTION		COMPARE TO FRESH STATE	NON-PLASTIC	PLASTIC	NON-PLASTIC	PLASTIC

ESTIMATED STRENGTH

REACTION TO IMPACT OF 1 LB. BALLPEEN HAMMER				REMOLDING[1]
"Rebounds" (Elastic) (RQ) A	"Pits" (Tensional) (PQ) B	"Dents" (Compression) (DQ) C	"Craters" (Shears) (CQ) D	Moldable (Friable) (MQ) E
>15000 psi[2] >103 MPa	8000-15000 psi[2] 55-103 MPa	3000-8000 psi[2] 21-55 MPa	1000-3000 psi[2] 7-21 MPa	<1000 psi[2] <7 MPa

(1) Strength Estimated by Soil Mechanics Techniques
(2) Approximate Unconfined Compressive Strength

DISCONTINUITIES

VERY LOW PERMEABILITY			MAY TRANSMIT WATER	
Solid (Random Breakage) (SRB) A	Solid (Preferred Breakage) (SPB) B	Solid (Latent Planes Of Separation) (LPS) C	Nonintersecting Open Planes (2-D) D	Intersecting Open Planes (3-D) E
			ATTITUDE	INTERLOCK

UNIT WEIGHT

Greater Than 160 pcf 2.55 g/cc A	150-160 pcf 2.40-2.55 g/cc B	140-150 pcf 2.25-240 g/cc C	130-140 pcf 2.10-2.25 g/cc D	Less Than 130 pcf 2.10 g/cc E

DESIGN NOTATION

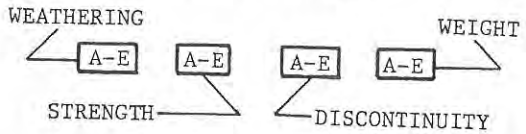

Figure 1. Basic elements of the unified rock classification system.

compressive strength from impact reaction. The spring-loaded scale and bucket of water are used to measure the weight of samples for determining apparent specific gravity.

The URCS design notation consists of underlined groups of four letters ranging from A through E which represent the five categories or design-limiting conditions of each of the basic elements of the system. The limiting conditions of the basic elements are described below in the order that they appear in the symbol.

Degree of Weathering

The degree of weathering in the URCS is restricted to chemical processes. The five design-limiting conditions of weathering are: 1) micro fresh state (MFS) designated by A, 2) visually fresh state (VFS) designated by B, 3) stained state (STS) designated by C, 4) partly decomposed state (PDS) designated by D, and 5) completely decomposed state (CDS) designated by E. These five weathering states are listed in the top line of Figure 1.

Micro Fresh State (MFS)

MFS is determined in the field by examining rock samples with the aid of a 10-power hand lens. This condition is characterized by absence of oxidation alteration of any mineral components. MFS will generally apply only to crystalline rocks, some volcanic rocks, and chemical sedimentary rocks. Investigations of crushed rock and concrete aggregate sources may require MFS rock, but ordinary rock-design evaluations usually do not require such high quality rock.

Visually Fresh State (VFS)

VFS is determined in the field by examining rock samples with the unaided eye. This condition is characterized by a uniform color of the rock material. VFS will apply to all rock types including some clastic sedimentary rocks. VFS samples commonly exhibit maximum unit weight, maximum specimen strength and least water absorption for the site from which comparisons to STS are made. The VFS is generally representative of the standard quality acceptable for all foundation and excavation designs.

Stained State (STS)

STS is determined in the field by examining rock samples with the unaided eye. This condition is characterized by partial or complete discoloration due to oxidation alteration of mineral components, but the specimen cannot be remolded with finger pressure. STS will apply to all rock types and commonly is the highest weathering state of Cenozoic clastic sedimentary rocks. STS specimen strength may or may not vary from that of VFS specimens; unit weights are usually lower and water absorptions are usually higher than VFS specimens.

Partly Decomposed State (PDS)

PDS is determined in the field by applying finger pressure to discolored specimens. The material is solid rock when in place but can be disaggregated into gravel or larger size rock fragments in a matrix of soil. Decomposed granite is an example of PDS weathering. The relative percentage of rock fragments is estimated and the quality of individual fragments is assessed with URCS. The soil fines are determined to be plastic or nonplastic.

The in-place strength is estimated by manual consistency values or by size, shape, and gradation of the remolded aggregate (Terzaghi and Peck, 1948). The remolded aggregate is tested for dilatency, dry strength, and toughness and classified according to field procedures of the Unified Soil Classification System (USCS) (Casagrande, 1948).

Completely Decomposed State (CDS)

CDS is determined in the field by applying finger pressure to discolored specimens in a manner similar to that for PDS specimens. CDS specimens disaggregate or remold to soil without gravel or larger size fragments of intact rock. The remolded material is determined to be plastic or nonplastic, and dry strength, dilatency, and toughness tests are performed. The in-place strength is estimated by manual consistency values. Both URCS and USCS symbols are recorded. Note that the URCS boundary separating rock from soil is the No. 4 sieve which is the gravel/sand division. Most investigators, as well as lay persons, generally accept that gravel is composed of rock fragments but sand is composed of mineral grains.

Estimated Strength

A reasonable estimate of specimen strength can be made by striking a sample, piece of rock core, or outcrop with the round end of a ballpeen hammer (or with the rounded head end of a 20-penny nail if the specimen is to be preserved). The resulting characteristic impact reaction indicates a range of unconfined compressive strength (Williamson,

1961). The rock specimen or outcrop is struck several times to permit evaluation of uniformity of response, and a quality is assigned based on the distinct reaction. The five kinds of reaction are illustrated in Figure 2.

The reaction of a rock specimen to the impact of a ballpeen hammer is distinct and characteristic depending on the range of unconfined compressive strength. The *nature* of the reaction, *not* the *magnitude* of the reaction is used to assign a strength quality to the specimen. Therefore, the reaction is independent of the intensity of the blow within the limitations of the tool used and the investigator's strength.

The five design-limiting conditions of strength based on impact reaction are: 1) rebound quality (RQ) designated by A, 2) pit quality (PQ) designated by B, 3) dent quality (DQ) designated by C, 4) crater quality (CQ) designated by D, and 5) moldable quality (MQ) designated by E. These five strength states are listed in the second line of Figure 1. The range of unconfined compressive strength in terms of pounds per square inch (psi) and megapascals (MPa) for each of the strength states is also listed in Figure 1.

Rebound Quality (RQ)

RQ rock material shows no reaction under the point of impact and is a true brittle-elastic substance in a mechanical sense. The estimated unconfined compressive strength of RQ material is greater than 15,000 psi (103 MPa). The exact strength value is seldom significant in typical civil engineering applications once the strength reaches this magnitude. RQ rock material produces free-draining fill that is suitable for road aggregate; however, it is often sharp and angular due to its brittleness and therefore may produce a less desirable material than PQ material. RQ rock material has a very high energy transfer in response to blasting and may be difficult to drill and break in the absence of planar separations.

Pit Quality (PQ)

PQ rock material produces a shallow rough pit under the point of impact due to explosive departure of mineral grains. This quality of specimen has an estimated unconfined compressive strength ranging from 8,000 to 15,000 psi (55 to 103 MPa) and is considered to be hard rock by the construction industry. PQ rock material produces free-draining fill and is suitable for road surfacing material. It has high energy transfer in response to blasting which produces generally good fragmentation and satisfactory excavation slopes. No special blasting design procedure is generally necessary.

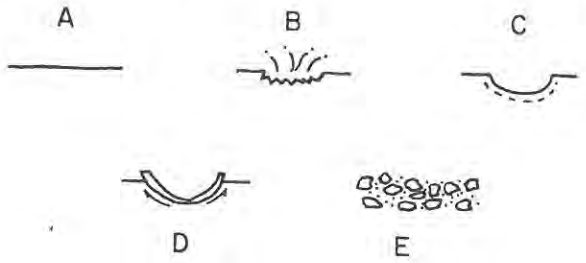

Figure 2. Reaction to impact of ballpeen hammer. A) Rebound quality, no reaction; B) Pit quality, rough pit; C) Dent quality, smooth depression; D) Crater quality, depression with upthrust material around perimeter; E) Moldable quality, crumbles with finger pressure.

Dent Quality (DQ)

DQ rock material produces a dent or depression under the point of impact indicating the presence of pore spaces between mineral grains. This quality of specimen has an estimated unconfined compressive strength ranging from 3,000 to 8,000 psi (21 to 55 MPa) and is approximately equivalent to the strength range of concrete. DQ rock material usually does not meet absorption specifications for road aggregate and has a relatively low energy transfer in response to blasting. Special blasting design may be necessary to avoid creating over-size blocks. DQ material is usually not suitable for road fill or surfacing and is not free-draining.

Crater Quality (CQ)

CQ rock material produces a shearing and upthrusting of mineral grains surrounding the point of impact resulting in a depression which resembles a moon crater. This quality of specimen has an estimated unconfined compressive strength ranging from 1,000 to 3,000 psi (7 to 21 MPa). CQ material can usually be recovered during diamond-core drilling operations, has high absorption, and will respond to freeze-thaw stresses by at least cracking and checking. It has very low energy transfer when blasted and can be excavated by means of machinery, produces poorly drained embankments, and is not suitable for road fill or surfacing material.

Moldable Quality (MQ)

MQ rock is in a condition which can be molded by finger pressure but retains the fabric of intact rock. The unconfined compressive strength for this

quality of specimen is less than 1,000 psi (7 MPa). MQ material must be examined and tested as a soil and a dual classification (URCS and USCS) is given. The material usually cannot be recovered by diamond-core drilling, can be excavated by machinery, and must be evaluated as a soil for design purposes.

Discontinuities

Directional weaknesses of a rock mass or rock material are termed planar or linear features. Planar separations are open separations that already exist in the rock mass and are defined by relative capacity to transmit water. Linear features are directional weaknesses due to visible or nonvisible alignments of mineral grains in an otherwise solid rock mass or material that usually require blasting or mechanical crushing to produce a separation.

For purposes of design evaluations, linear features are defined by breakage characteristics. Planar features or open planes of separation are defined by the scale dimension of the rock mass examined and by the geometric determination that defines a plane or shape.

The five design-limiting conditions of discontinuities are: 1) solid random breakage (SRB) designated by A, 2) solid preferred breakage (SPB) designated by B, 3) latent planar separations (LPS) designated by C, 4) two-dimensional open planar separations (2-D) designated by D, and 5) three-dimensional open planar separations (3-D) designated by E. These five discontinuity states are listed in the third line of Figure 1.

Solid Random Breakage (SRB)

SRB represents ideal design conditions in which planar and linear features have no effect within the dimensions of the rock mass examined. The specimen strength equals the mass strength so that the strength value of any individual sample tested is directly representative of the entire rock-mass strength. Needless to say, this is seldom the case, except in very limited foundation dimensions.

Solid Preferred Breakage (SPB)

SPB indicates that a nonvisible alignment of mineral grains has resulted in a directional weakness in the rock mass or material. The rock breaks consistently along a uniform angle or direction. SPB rock material may produce an undesirable shape or size for rock aggregate or may prevent the achievement of a desired slope in an excavation. It may be an adverse quality in the production of dimension stone.

Latent Planar Separations (LPS)

LPS indicates a visible alignment of mineral grains or infilling material which may or may not affect the strength or breakage character of the rock mass or material during excavation or crushing. The latent planes may be stronger or weaker than the rock mass. The reaction of LPS material to impact defines the strength estimate. Latent planes occur in patterns or at random and are continuous or discontinuous; the planes may be of measurable thickness. In all cases, the infilling material in the latent plane of separation has an unconfined compressive strength greater than 1,000 psi (7 MPa).

LPS material is usually not a foundation design consideration because the material is, for practical purposes, a solid. In consideration of rock slope design or road aggregate source, blasting energy will, in most cases, be reflected by the latent plane and produce a separation and breakage at right angles to the plane alignment.

Two-Dimensional Open Planar Separations (2-D)

The 2-D category indicates the presence of one or more parallel open planes of separation that pass through the rock mass at the point of examination. The 2-D planar separations may vary in frequency and spacing but do not intersect. The attitude, relief, and continuity of the plane or planes are fundamental elements of design analysis. Water transmission along the open planes can be determined by observations of the drilling operation or by water testing.

Three-Dimensional Open Planar Separations (3-D)

The 3-D category indicates the presence of two or more intersecting planar discontinuities or open planes of separation that pass through the rock mass at the point of examination. The planar separation may form patterns or may be random in occurrence. Internal planar separations (IPS) terminate within the rock mass; mass planar separations (MPS) pass entirely through the rock mass and are infinite in extent in terms of design.

By geometric definition, three dimensions form a shape. This shape is often referred to as a joint block which has an average size and weight that can be estimated. The degree of interlock between joint blocks can be used to estimate the strength-of-foundation or the stability-of-excavation factor.

In the case of MPS, the attitude of the planes with respect to the slope or excavation is the chief design

factor. The ability of the planes to transmit water is estimated or measured as in the 2-D category above.

Unit Weight

Density or unit weight has been found to be one of the most useful and reliable means of communicating rock quality to design engineers and contractors, due to their past experience with rock. The unit weight is determined in the field with the aid of a spring-loaded "fish" scale and a bucket of water. A suitable sample is fastened to the scale with a short piece of string. The weight of the sample is determined first in air and then submerged in water. The weight of the string (wet and dry) is ignored. The unit weight is calculated by the following equation:

$$\text{Unit Weight} = [Wa/(Wa - Ww)]Dw$$

where Wa is the weight of the sample in air, Ww is the weight of the sample in water, and Dw is the density of water (62.4 pounds per cubic foot, pcf, 1.0 g/cc). The weight of the sample in air and water can be measured in either pounds or grams since the mathematical operation with the weights produces a dimensionless number.

The five categories of unit weight are: 1) greater than 160 pcf (2.55 g/cc) designated by A, 2) 150 to 160 pcf (2.40 to 2.55 g/cc) designated by B, 3) 140 to 150 pcf (2.25 to 2.40 g/cc) designated by C, 4) 130 to 140 pcf (2.10 to 2.25 g/cc) designated by D, and 5) less than 130 pcf (2.10 g/cc) designated by E. These five unit weight conditions are listed in the bottom line of Figure 1.

The unit weight design evaluation establishes the driving force in problems of slope stability, the relative usefulness of the rock material as a surface course or concrete aggregate, of the weight-volume relationship for estimates of haul cost. Unit weight establishes the degree of change due to change of weathering state.

As a general rule, the author has found that rock material having a unit weight greater than 160 pcf (2.55 g/cc) is suitable more than 50 percent of the time for use as road aggregate, concrete aggregate, riprap, or jettystone without laboratory testing. Rock material having a unit weight of 150 to 160 pcf (2.40 to 2.55 g/cc) may be acceptable for these uses but requires laboratory testing for confirmation. Rock having a unit weight less than 150 pcf (2.40 g/cc) is usually not acceptable for these uses, typically does not produce free-draining fill, and will probably degrade. Rock having a unit weight less than 130 pcf (2.10 g/cc) can usually be excavated by machinery but will likely degrade during excavation under abrasion of excavation equipment.

Symbols and Notations

The URCS employs a simple system of notation for graphic representation on geotechnical inventories, boring logs, maps, and sections. The notation registers rapidly in the mind and minimizes the required drafting effort. The letter design symbols for the four basic elements described above and shown in Figure 1 are grouped together in a four-letter notation.

The four letters are upper case and are underlined. The letter "A" denotes that the least design evaluation is generally required, while the letter "E" denotes the greatest design evaluation. The letter "O" in sequence indicates that no determination of that basic element was made; a lower case "e" after an upper case letter indicates that the value of the basic element was estimated.

The field notation should include both the letter symbol and the abbreviated basis written under the letter. For example:

Symbol on log:	BCAD
Field notebook:	$\frac{B}{\text{VFS}}\ \frac{C}{\text{DQ}}\ \frac{A}{\text{SRB}}\ \frac{D}{130}$
Explanation:	B—Visually fresh state C—Dent quality A—Solid random breakage D—Unit weight of 130 pcf

Design values can then be established for this material for the intended purpose.

Some combinations of states or qualities do not occur. For example, the CDS weathering state could not occur with RQ strength or 160 pcf (2.55 g/cc) unit weight. Neither could MQ strength material occur with MFS weathering.

Design values of the four basic elements are not equivalent even though the same letter notation might apply. In general, rock material designated AAAA will require the least design evaluation while EEEE will require the most.

DISCUSSION

Information pertaining to rock material or rock masses in current contract specifications or design memoranda is sketchy and ambiguous, to say the least, even when supported by laboratory test data. The terminology used in drilling logs and geologic

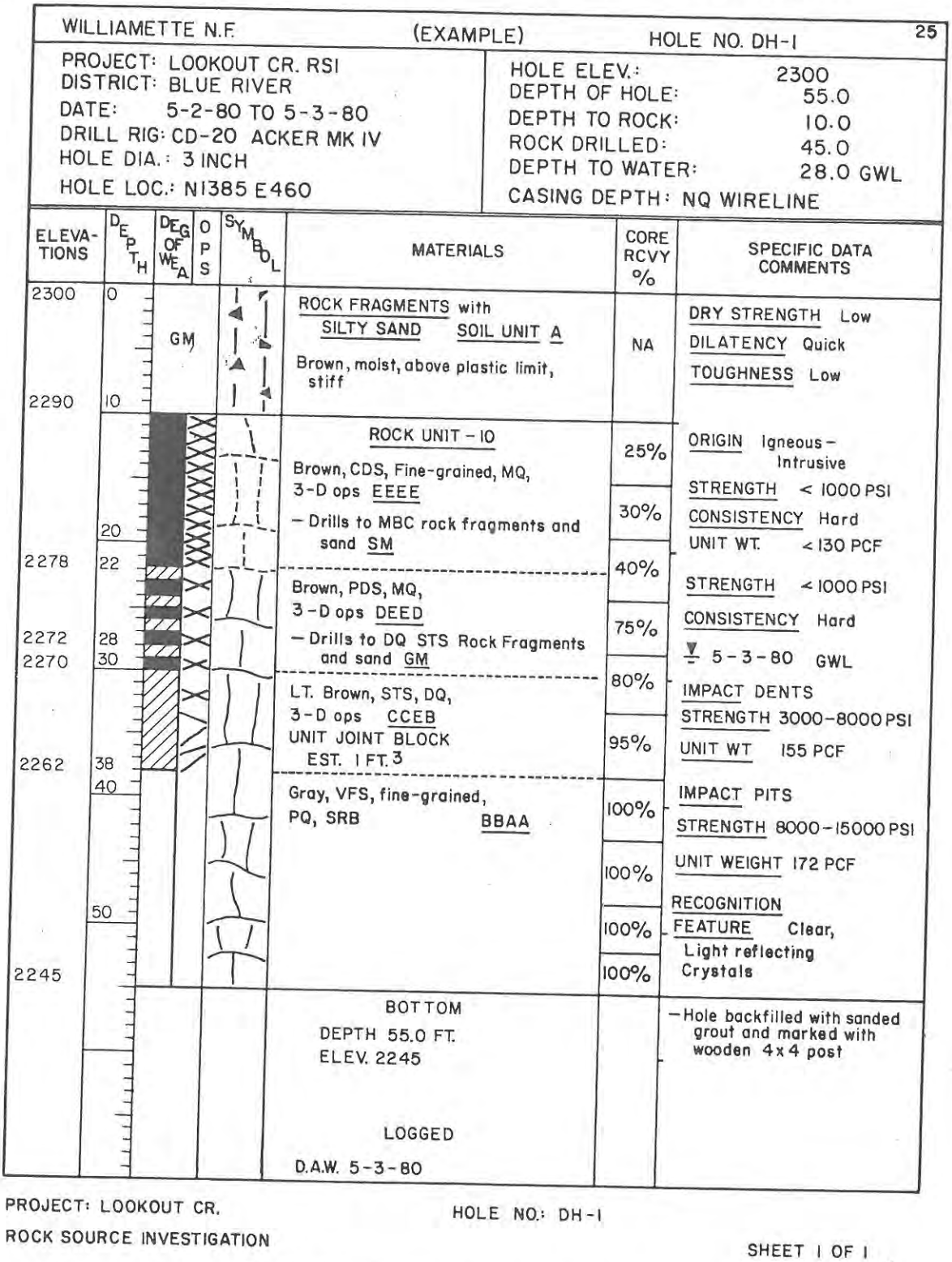

Figure 3. Example of boring log utilizing URCS notation.

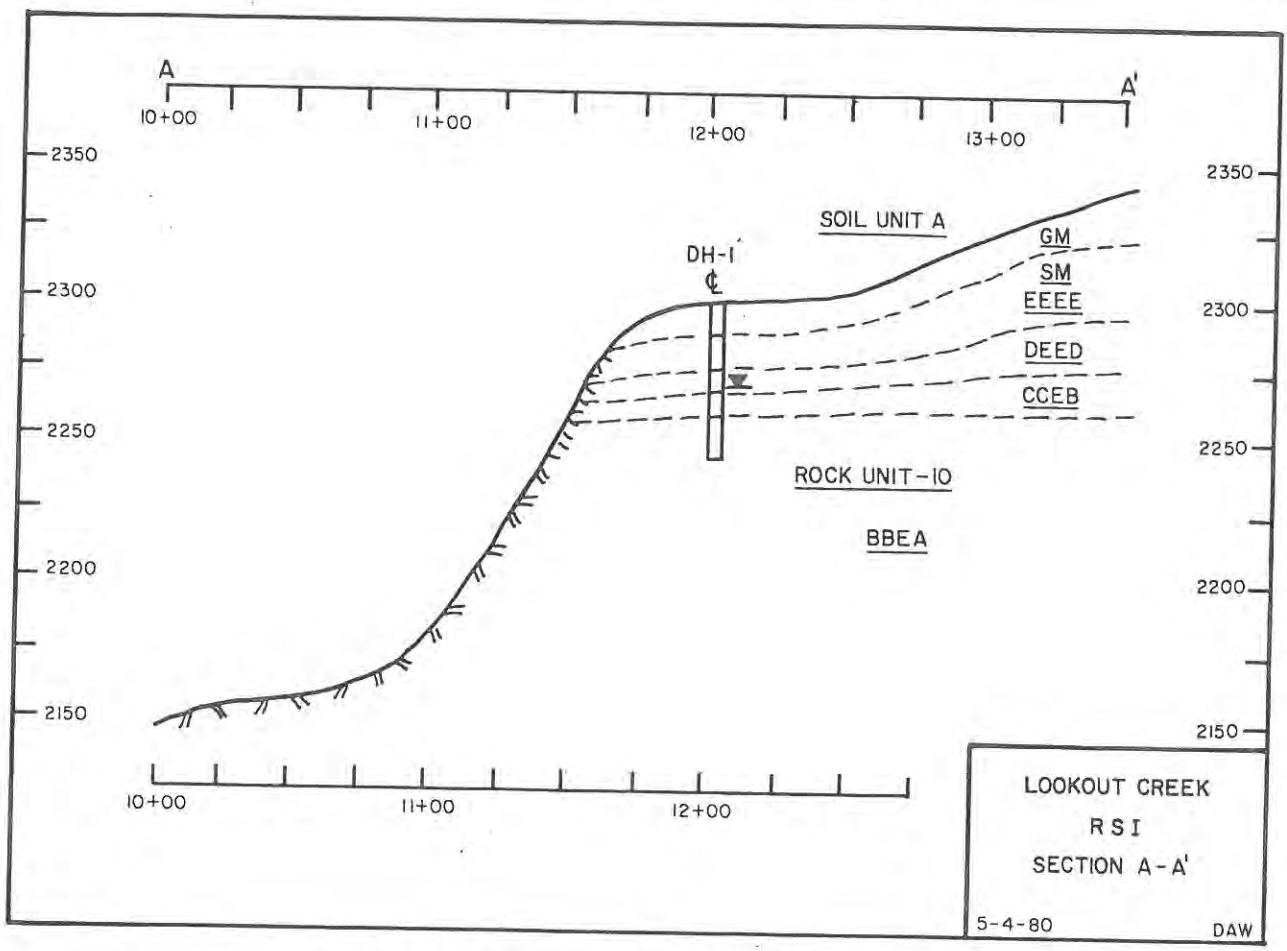

Figure 4. Example of geotechnical section utilizing URCS notation.

sections usually fails to provide understandable information to the contractor for purposes of bid estimates.

Here is an example of a rock description found in a typical contract specification or design memorandum:

> "Slightly weathered, moderately hard, highly fractured, lightweight rhyolitic rock."

This information is sincerely intended to portray actual conditions existing at a site and will provide the basis of the design, the cost estimate, and the judgment of the construction method required as well as the basis for defending the owner from future construction claims or extras.

Descriptive terms such as these vary widely in meaning, depending on both individual and professional experience, and cannot be quantified with any degree of precision or uniformity. Consequently, design decisions, cost estimates, or construction methods based on such information also vary widely.

The URCS offers a suitable alternative to this ambiguous, descriptive approach. The term "unified" refers to the necessary unification of geology and engineering for geotechnical purposes. The URCS equivalent of the typical rock description for contract specifications and design memoranda is CCED. This simple notation is based on uniform acceptable procedures used to define design conditions.

The CCED notation indicates that the degree of weathering of the rock is the stained state (STS) or not representative of the standard design condition that exists at the site and that comparative data will have to be determined. The strength of the rock material is dent quality (DQ) and has a range of unconfined compressive strength of 3,000 to 8,000 psi (21 to 55 MPa), which is comparable to the

strength of concrete. The rock mass has three-dimensional planar separations (3-D), which will be the primary design and construction consideration with respect to stability, excavation, and material use. The size, shape, volume and weight of the unit joint block have not been defined and will have to be determined as well as the continuity and attitude of the planes and degree of interlock of the joint blocks. Water transmission will have to be estimated or measured. The unit weight of the rock material is 130 to 140 pcf (2.10 to 2.25 g/cc), which indicates that there will be full loads for hauling equipment but that the material is probably not free draining nor can it be used in load-bearing fills or for surfacing.

This simple but well-defined verifiable design notation is suitable for graphic abstracts, boring logs, plans and sections, and other documentation. Since it is based on basic design elements, the notation provides a reliable means for decision. The notation registers rapidly in the mind during scanning and allows rapid comparison with several rock conditions. Similarities and differences can be established immediately. The simple notation minimizes drafting effort. The notation prevents subjective connotation and allows recording of the significant information on a scale appropriate to the investigation. The information can be checked and verified.

Examples of the notation in actual use on a boring log and on a section are presented as Figures 3 and 4, respectively.

CONCLUSION

The URCS furnishes a means by which persons from professional and technical disciplines who have different experience levels can communicate in a reliable and unambiguous manner about rock conditions.

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DECLARATION OF DANIEL QUINLEY

I, Daniel Quinley, declare as follows:

1. I am an attorney with Jeffer Mangels Butler Mitchell, LLP, counsel of record for Robertson's Ready Mix ("RRM"). I have personal knowledge of the facts set forth herein. except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of RRM's Request for Determination of Vested Rights ("RFD"), dated December 15, 2021.

2. In the course of my representation of RRM, I undertook historical research. I have over 15 years of experience conducting historical and archival research, including primary source documents. In the course of research conducted for RRM'S RFD, I obtained copies of multiple primary source documents, attached to this RFD in Appendix C-2 and Appendix C-3.

3. The documents in Exhibit C-2 were obtained from digital archives, including University of California, Davis; the HathiTrust Digital Library, and Google Books. I downloaded full file copies of Exhibits C-2.1 through C-2.22 from the digital archives and then created the attached exhibits.

4. The documents in Exhibit C-3 were obtained from digital archives, including Newspapers.com by Ancestry; Newspaperarchive.com; and the California Digital Newspaper Collection at the University of California, Riverside. I downloaded full file copies of Exhibits C-3.1-3.114 and then created the attached exhibits.

5. In the course of my research of the historical newspaper record, I specifically researched public notices regarding the issuance of use permits under Ordinance 348, beginning January 1, 1949 and ending January 1, 1976. During that research I found no public notices for use permits relating to the property subject to RRM'S RFD (the "HH VRA"). All public notices

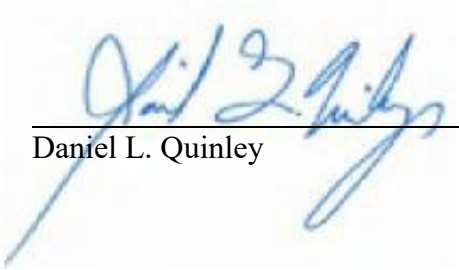
for use permits authorizing surface mining operations that I found during the course of my research are attached to this RFD as Exhibits C-3.95, C-3.103, and C-3.104.

6. The documents in Exhibit C-4 were obtained from WestLaw or the Superior Court for the County of Riverside.

7. To the best of my knowledge, the attached exhibits are accurate and correct reproductions of the original documents.

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15th day of December, 2021, at Berkeley, California.

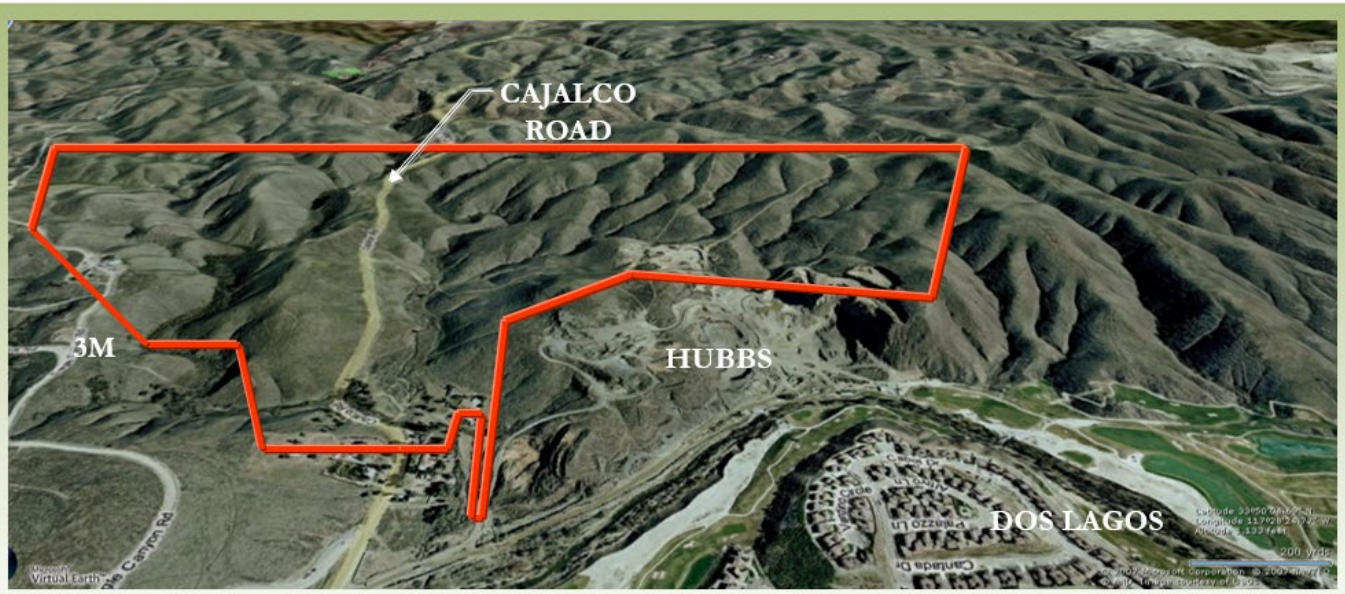


Daniel L. Quinley

EXHIBIT 1

Mining Opportunities at Dos Arroyos

Project Definition



AERIAL MAP OF PROPERTY

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EXHIBIT 2

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