

BISBEE CAMP, ARIZONA

MEMORANDUM

FIRST SYNDICATE

IN A PLAN

FIRST: To Acquire Control of 3,800 Acres of Mining Claims and Agricultural Lands With Valuable Water Rights.

SECOND: To Acquire Control of Phelps Dodge Mines.

Reference is made to accompanying pamphlet of January, 1925.

San Francisco, California, March 31st, 1925.

Outline History of Litigation:

There has been litigation involving certain valuable properties in Bisbee Camp, Arizona.

The litigation herein mentioned was instituted April 11th, 1917, and was removed from the local court of Cochise County to the United States District Court of the District of Arizona, was tried before the Standing Master of this Court, Hon. Edwin F. Jones, the trial continuing over a period of four months through the latter part of 1919 and early part of 1920, ending March 4th.

In the original complaint Phelps Dodge attorneys claimed a debit balance of \$2,600,000 as due from H. B. Hovland to an old partnership, but thereafter, and before the case came to trial, these attorneys upon their own initiative reduced said claims by about \$1,000,000, to about \$1,600,000.

In November, 1921, the Standing Master filed his report which followed quite closely the brief of the Phelps Dodge attorneys, the Master's report holding a debit balance of \$1,305,041.11 against said Hovland.

In April, 1922, Hon. M. T. Dooling, called in to sit in review of the Master's report, revised one item alone and thereby reduced the said debit balance by \$926,435.61, to \$378,605.50, with the *net* debit balance of Hovland to the partnership of \$145,779.01, which decree and the Master's report are appealed from before the Circuit Court of Appeals of the 9th Circuit by said Hovland, in the full

belief that in the review of this case before the Circuit Court the Master's report and the Dooling decree will be reversed and a credit balance of said Hovland will be established in the Appellate decree.

From the surprising beginning to the present, the trend of revisions has been towards Hovland's contentions, and so recognized by Phelps Dodge attorneys, who have been and now are resisting said appeal of the case by motions for dismissal and in other ways.

Steps to Objectives Disclosed in Accompanying Pamphlet of January, 1925:

No. 1. It is the purpose of appellant to prosecute to conclusion case No. 4366, now before the Circuit Court of Appeals of the 9th Circuit, San Francisco, the parties to this action being:

Henry B. Hovland, Appellant,

vs.

Hoval A. Smith, Appellee of record, but with Phelps Dodge Corporation real party in interest.

(a) Incidentally the first effect of this appeal while it is pending is equivalent to an option upon the entire Bisbee Camp situation, as explained in the pamphlet, and under this option affording time to work out financing problems.

(b) The second effect of the appeal will be to reduce or reverse the present debit balance against appellant in the Dooling decree, if the Circuit Court of Appeals should make such revision, thus offsetting the balance at present accredited to appellee in the Dooling decree and by such reversal making unavailable this balance to Phelps Dodge in bidding for the 13 shares of Warren Ranch stock through appellee at the public sale of these shares.

(c) The best interests of the Garden Development Company lie opposed to those of the appellee at said sale and this company will join a bidder through appellant on terms satisfactory to the bidder and the company.

(d) In order to carry out No. 1, it will be necessary to provide \$3,768.65 on or before May 1st, 1925, to meet appellant's part of the printing costs of the record proper in the appeal before the Circuit Court, and to provide a further estimated sum of \$1,231.35 for printing appellant's appeal in the case.

2. Owing to the voluminous records of this case in appeal it is estimated by those familiar with such matters that a decision by the Circuit Court upon the issues involved can scarcely be expected within six months and probably longer and towards the latter part of 1925. After the decree of the Appellate Court has been entered all properties involved in the litigation, including the 13 shares of Warren Ranch stock, will be sold under court order and liquidated.

3. The prosecution of the case in appeal incidentally makes it impracticable on the part of the appellee, pending the appeal, to demand and cause to be sold under the provisions of the Dooling

decree the said 13 shares of stock, a fact testified to under oath by counsel for appellee, and thus by prosecution of the appeal time is afforded for a thorough study of the Bisbee Camp situation by all interested and for financing of the purchase of the said 13 shares of stock when sold *after a final decree has been entered by the Circuit Court of Appeals*. This financing may be accomplished by:

- (a) Acquiring an option upon all stock of the Garden Development Company, or upon all of the rights and assets of said company, an option which is available at any time to appellant upon request, by payment of about \$25,000 to the company with the balance of the total purchase price deferred one year or two years as may be agreed upon.
 - (b) Organizing a syndicate or corporation which will take over said option upon the Garden Development Company holdings and which will be adequately financed to bid for the 13 shares of Ranch stock when offered for sale.
4. After the 13 shares of Warren Ranch stock have been so acquired by purchase the corporate owner of such stock may exercise all of the legal rights of control and protection of the property of the Ranch, which procedure will place the Phelps Dodge Corporation in the position of being compelled to close down its Sacramento Hill and mill operations.
5. Thereupon, the said syndicate or corporation will entertain proposals, either to sell its holdings to the Phelps Dodge Corporation at a profit, or to purchase the Phelps Dodge mines.

6. Thus, there will appear three steps of financing:

- (a) The financing through a small syndicate sufficiently to meet the cost of printing the records in the appeal estimated at \$3,768.65 as appellant's share thereof, and printing appellant's brief in the case at an estimated cost of \$1,231.35, a total of \$5,000.00, and through such syndicate and organization creating a basis for further financing.

- (b) The financing of the purchase of the 13 shares of Warren Ranch stock and the acquisition of the Garden Development Company holdings through an enlarged syndicate or corporation.

- (c) The financing of the purchase of the Phelps Dodge mines through an enlarged syndicate or corporation, or the sale of all syndicate or corporation holdings at profits and the distribution of such profits to syndicate members or stockholders.

First Syndicate:

The purpose of the FIRST SYNDICATE is to provide \$5,000 for printing expense in the case in appeal before the Circuit Court of Appeals of the 9th Circuit.

Printing records proper, appellant's part.....	\$3,768.65
Printing appellant' brief	1,231.35

Total funds to be provided by *First Syndicate* \$5,000.00

This first \$5,000 paid into the syndicate treasury will leave certain valuable preference rights with each contributor thereto as hereinafter set out:

FIRST: Personal note of H. B. Hovland to each investor in the syndicate for the net amount so paid in, as an assurance that within plans shall be carried out and that offers herein set out shall be made to said investor.

SECOND: Three months after said appellate decree shall have been rendered H. B. Hovland personally agrees to pay each investor in the syndicate an amount in cash equivalent to the net amount so paid in, as an additional and separate profit to said investor.

THIRD: The optional right of an investor to convert his syndicate holdings (receipt) into said new securities on the basis of 1 of the old for 5 of the new securities.

FOURTH: The further optional right of an investor in said syndicate to subscribe for and purchase new securities on the basis of 5 of the new for each 1 held of the old.

H. B. Hovland hereby agrees to provide a corporation capitalized at \$500,000, divided into \$50,000 shares of a par value of \$10 each, and that this corporation shall reserve out of its total capitalization 2,500 shares thereof for said conversion rights, and 2,500 shares thereof for said subscription rights, a total of 5,000 shares to be reserved and held for the purposes herein provided, and said Hovland furthermore agrees that the said corporation shall make the offers to holders of *First Syndicate* receipts as herein set out.

It is contemplated that the said corporation shall offer for subscription and sell blocks of its stock from time to time in successive issues to provide the necessary funds for the purchase of the properties herein specified and in each such issue the investors in the *First Syndicate* shall be offered their proportional rights to convert and subscribe so that if the said investors in each issue exercise their optional rights to convert and subscribe they will acquire and hold one-tenth (1/10) of the issued stock.

We may assume, for illustration, that the said corporation will first offer a block of 10,000 shares for subscription and sale at \$10 per share, and further assume that an investor in the *First Syndicate* holds a receipt for \$200 with said conversion and subscription rights attaching thereto. Under the *Third* preference right this investor, without further cash outlay, would receive 20 full paid \$10 par value shares of a total par value of \$200 in exchange for one-fifth (1/5) of his total conversion rights, and under the *Fourth* preference right he would have the further right to subscribe for an additional 20 shares through one-fifth (1/5) of his subscription rights and to pay for said stock at the subscription price.

If, successively, five offerings of 10,000 shares each were made by the corporation then the following table would express the investment:

<i>Investment.</i>	<i>Ratio of Final Conversion.</i>		<i>Final Rights to Subscribe.</i>		
	Exchange	Shares	Par value	Shares	Par value
\$200	5 for 1	100	\$1,000	100	\$1,000

An investor in the *First Syndicate* assumes no actual or implied obligation to convert or subscribe but such conversion or subscription shall be entirely optional with him. However, as shown in accompanying pamphlet, the 13 shares of Warren Ranch stock and the holdings of the Garden Development Company are valuable assets and when acquired and held as contemplated by the said company they offer profits through the exercise of the said conversion and subscription rights to the holder thereof. At a later date when exercised such rights to convert and subscribe are subject to the approval of the State Corporation Commissioner.

The plan herein outlined to the end of acquiring Bisbee Camp properties is not essentially contingent upon the character of the forthcoming decree of the Appellate Court, for in any event all of the old partnership assets, including the 13 shares of Warren Ranch stock, ultimately will be sold under court orders and decree, and it is planned that the said proposed corporation shall be in readiness to bid therefor at the said sale.

H. B. Hovland, appellant in this case in appeal, shall and will personally accept and assume the credits or debits that may come to him in the Appellate decree, so that should a debit balance stand against him in said decree then such debit balance shall not be assumed by the investors in said *First Syndicate* nor by investors in said subsequent corporation, which corporation will be provided primarily for the purpose of acquiring the 13 shares of Warren Ranch stock and the holdings of the Garden Development Company; but because of the option afforded upon the Bisbee Camp situation by the prosecution of the appeal of said case, and because of the commitments of H. B. Hovland herein made, the *First Syndicate* and the corporation to follow shall assume the ordinary expense associated with the litigation and said Hovland, who has held steady during eight years, as shown by the records, at times resisting and overcoming great odds set up against him, will continue to press on to the acquisition of the valuable properties involved and will manage the *First Syndicate* and the interests of the investors therein to the best of his ability.

As heretofore stated the success of the investor in the *First Syndicate* is not contingent essentially upon the question as to whether or not there is a credit or debit balance to Hovland in the Appellate decree.

However, should a credit balance accrue to said Hovland in the forthcoming Appellate decree, then Hovland agrees that such credit balance may be used by said corporation in bidding for the said 13 shares of Warren Ranch stock when sold under a court

order, or used in bidding for other personal property when so sold, but such credit balance, nevertheless, shall remain the asset of said Hovland personally in like manner as any debit balance against Hovland in said decree shall be assumed by Hovland personally.

The first desire of H. B. Hovland in this connection is that investors in the *First Syndicate* shall assume the least risk in such investment and that they shall enjoy liberal profits as a result thereof. To further these ends commitments are made by said Hovland personally in the *First* and *Second* preference rights:

FIRST: Each investor in the *First Syndicate* will receive the personal note of H. B. Hovland for the net amount of money paid into the said syndicate by such investor, said note to be payable nine months after date, to bear six per cent interest per annum and to be collectible by said investor upon presentation of the note when due with the syndicate receipt carrying the original conversion and subscription rights therewith. If, however, said investor has found it more profitable to convert and subscribe as herein provided, then, and in that event, the said note shall be considered liquidated and cancelled.

SECOND: Three months after the Circuit Court has entered its decree in said case in appeal, H. B. Hovland agrees to pay each investor in the *First Syndicate* an amount in cash equivalent to the net amount so invested as an unconditional profit to said investor.

Each *First Syndicate* investor will be kept informed from time to time in respect to plans herein outlined.

In any matter of policy submitted to *First Syndicate* investors the consent of the majority holdings thereof shall prevail, but the basic ratios herein accepted shall remain.

Remittances up to \$5,000 only will be accepted under the within terms and condition. In case of oversubscription allotments of *First Syndicate* holdings will be prorated fairly within said \$5,000 at the close of business on April 29th, 1925, and the proper surplus balance returned to each investor.

Remittances for the *First Syndicate* should be made by draft or certified check to the order of Pacific National Bank of San Francisco, and addressed to said bank, 301 California Street, San Francisco, California. Remittances should be in the hands of said bank on or before April 29th, 1925. Names and addresses of investors should be given in full and written plainly.

Those interested in participating in within plans should enter the project in the beginning and thus become identified with this new phase of Bisbee Camp investments.

The investors in the *First Syndicate* having paid in the first \$5,000 will be the first to enter the Bisbee Camp deal as outlined and will have the opportunity of greater profits than will other investors in subsequent financings.

*San Francisco, California,
March 31st, 1925,*

H. B. HOVLAND.

Combined receipt and note in connection with MEMORANDUM of March 31st, 1925, signed by H. B. Hovland and filed with PACIFIC NATIONAL BANK OF SAN FRANCISCO, acting solely as a depository for H. B. Hovland, Manager, to receive and disburse *First Syndicate* funds to the order of H. B. Hovland, Manager, and to deliver this receipt and note, at the close of business April 29th, 1925, to the investor making remittance hereunder without further responsibility on the part of the said

PACIFIC NATIONAL BANK OF SAN FRANCISCO,
301 California Street, San Francisco, California.

RECEIPT

San Francisco, California,.....1925.

I hereby acknowledge receipt of the sum of.....

(\$.....)

to me in hand paid by.....
subject to the terms and conditions of proposals referred to in the *First Syndicate* MEMORNADUM of H. B. Hovland, and there is hereby incorporated herein the following rights, which are more specifically referred to in said MEMORNADUM concerning said *First Syndicate*; which said MEMORANDUM is dated, San Francisco, California, March 31st, 1925, and signed by H. B. Hovland; and this receipt shall operate as an agreement entitling the holder thereof to all of the rights and privileges contained in said syndicate proposal, and herein outlined as follows:

FIRST: Personal note of H. B. Hovland to each investor in the syndicate for the net amount so paid in, as an assurance that within plans shall be carried out and that offers herein set out shall be made to said investor.

SECOND: Three months after said Appellate decree shall have been rendered H. B. Hovland personally agrees to pay each investor in the syndicate an amount in cash equivalent to the net amount so paid in, as an additional and separate profit to said investor.

THIRD: The optional right of an investor to convert his syndicate holdings (receipt) into said new securities on the basis of 1 of the old for 5 of the new securities.

FOURTH: The further optional right of an investor in said syndicate to subscribe for and purchase new securities on the basis of 5 of the new for 1 held of the old.

NOTE

\$..... San Francisco, California,, 1925.

Nine months after date (without grace) I promise to pay to the order of

..... Dollars,

for value received, with interest at the rate of six per cent per annum from, 1925, until paid, both principal and interest payable only in UNITED STATES GOLD COIN. This promissory note is subject to the proposals, terms and conditions contained in the MEMORANDUM dated March 31st, 1925, with reference to the *First Syndicate organized by H. B. Hovland.*

(To be Signed) H. B. HOVLAND.

(The above receipt and note form a unit and as such is negotiable and transferable. A transfer must be verified by some bank or trust company.)

(Conversion and subscription rights herewith and as exercised must be endorsed on back hereof.)

SAN FRANCISCO, California, April 6th, 1925.

*Pacific National Bank of San Francisco,
301 California Street, San Francisco, California.*

DEAR SIRs:

Herewith I hand you a memorandum, signed by me and dated San Francisco, California, March 31st, 1925, and accompanying said memorandum, a pamphlet, dated January, 1925, also written under my signature, all in connection with a *First Syndicate* through which it is proposed to provide \$5,000 for certain purposes as set out in said memorandum.

In accordance with our conversation relative to this matter you have agreed to receive and disburse in the name of H. B. Hovland, manager, any funds that may come to your bank through the provisions of said memorandum, and have agreed to transmit a Receipt and Note in the forms set out in the said memorandum and as executed by H. B. Hovland in accordance with the terms and conditions therein provided, to each person who makes remittance to you under the said *First Syndicate*, said Receipt and Note to be so transmitted not earlier than at the close of business April 29th, 1925, and after the funds so received shall have been prorated in case of an oversubscription.

To the extent that funds have been deposited with you under the provisions of said *First Syndicate* you will first honor my check, H. B. Hovland, Manager, drawn upon your bank to the order of Frank D. Monckton, Clerk of the Circuit Court of Appeals of the 9th Circuit, for the amount \$3,768.65, and secondly honor my check drawn upon your bank and said funds to the order of Filmer Brothers Electrotpe Company for the amount \$1,231.35, and honor no other checks drawn against said funds.

Yours very truly,

H. B. HOVLAND.

Accepted April 6, 1925.

PACIFIC NATIONAL BANK,
KENNETH A. MILLICAN,
Manager Central Service Department.

Since the above memorandum was filed in the Pacific National Bank of San Francisco on April 6th, 1925, responsible underwriters have agreed to take and pay for any and all combined receipts and notes up to the stipulated \$5,000 and not otherwise taken and paid for by investors making remittances therefore. However, it now seems probable that the \$5,000 will be fully subscribed for by investors on or before April 29th, 1925.

H. B. HOVLAND.