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3 **BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION**

4 In Re:

5 Appeal of Water Pollution Control Permit:  
6 Permit No. NEV2009104  
7 First Liberty Power Corp.

8 **APPELLANT'S OPENING BRIEF**

9 Hearing Date: November 14, 2016  
10 Hearing Time: 9:00 AM

11 Appellant Steve Vogel hereby submits this opening brief.

12 The Fencemaker facility is located on public land in Pershing County, Nevada, within  
13 Section 10, Township 26 North, Range 37 East, Mount Diablo Baseline and Meridian,  
14 approximately 49 miles southeast of the town of Lovelock, within mining claims properly  
15 located in 1983 by Silver Bell Mining & Developing, Inc. ("Silver Bell") which has at all times  
16 relevant and since 1983 maintained the Fencemaker Mining Claims.

17 The Nevada Division of Environmental Protection (NDEP) originally issued Water  
18 Pollution Control Permit NEV2009104 to Stockpile Reserves, Inc. in September of 2009. On  
19 June 23, 2016, NDEP reissued the discharge permit to First Liberty Power Corp. Permit  
20 NEV2009104 authorizes the permittee to construct, operate and close the Fencemaker Project.  
21 The permit authorizes the extraction of up to 36,500 tons of ore per year.

22 On June 15, 2016, a request for an appeal hearing was submitted to the State  
23 Environmental Commission (SEC) signed by Mr. Steve Vogel. Mr. Vogel alleges that the  
24 NDEP Water Pollution Control permit issued to First Liberty Power Corp. was affected by error  
25 of law. Specifically, Mr. Vogel alleges that First Liberty Power Corp. does not have the  
26 appropriate mineral rights or business license to be the lawful permittee for discharge permit  
27 NEV2009104. First Liberty Power is trespassing on Silver Bell's mining claims and, upon  
28 information and belief, unlawfully removing ore from those mining claims and NDEP's issuance  
of the permit at issue has allowed and facilitated First Liberty's unlawful acts. Although NDEP  
does not determine ownership rights or decide property disputes, appellant contends there should  
be adequate due diligence by the agency to confirm through documentation that the applicant has

1 the legal property interest or can produce evidence to demonstrate the applicant has the legal  
2 right to make use of the lands as proposed.

3 **I. STATEMENT OF ISSUES**

4 The Fencemaker Mining Claims<sup>1</sup> were located on May 4, 1983 and have been properly  
5 maintained since that time and are owned by Silver Bell. *See* Exhibit A, U.S. Bureau of Land  
6 Management Claim Name/Claim Number Index (LR 2000 Database) Printout dated June 27,  
7 2016. First Liberty is not in lawful possession of the Fencemaker lands at issue and had no legal  
8 right to apply for the requested permit or to enter the lands at issue. The Nevada Secretary of  
9 State's website reflects that First Liberty does not hold any of the officer's positions for Silver  
10 Bell nor does First Liberty have any decision-making authority for Silver Bell or the Fencemaker  
11 Claims.

12 Although this appeal will not decide the ownership dispute which appellant  
13 acknowledges must be resolved by a Court or between the parties themselves, the issue presented  
14 is whether the State agency must require some legal documentation to demonstrate the permit  
15 applicant has the legal right to conduct the proposed activities in the permit application on the  
16 lands at issue. Absent such documentation and minimal due diligence the agency action could,  
17 as is the case here, result in facilitating a trespass on, conversion of and potential damage to the  
18 property of another.

19 **II. STATEMENT OF FACTS**

20 Audrey Treu Gertz and her husband Walter Gertz formed Silver Bell in 1974. Audrey  
21 and Walter had four children, Jack True, Marlene Vogel, Laura Gibbs and Ardyth Thein. Walter  
22 preceded Audrey in death. Audrey died on December 6, 1995, leaving three living children  
23 (Jack Treu, Marlene Vogel and Laura Gibbs) and one deceased child, Adryth Thein, who had  
24 three living children, Scott Warren, Lee Warren and Robert Spencer Thein. After Audrey's  
25 passing in 1995, no one other than Marlene Vogel expressed any interest or willingness in  
26 spending the time and money to develop the Fencemaker Project. As a result, Marlene Vogel  
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28 <sup>1</sup> The Fencemaker Mining Claims shall mean FENCEMAKER 1, FENCEMAKER B, FENCEMAKER C, FENCEMAKER D, and FENCEMAKER E.

1 has put all of the money into maintaining the mining claims, including annual claims  
2 maintenance fees to the BLM, recorder and State fees for the claims and necessary Secretary of  
3 State fees for Silver Bell, the owner of the Fencemaker Claims and the Fencemaker Project.

4 Appellant, Steve Vogel, is one of Marlene's four living children. Marlene's brother, Jack  
5 True, has served as President of Silver Bell and also has contributed some of his time since 1995  
6 to assisting with the annual paperwork for the corporation. Current Nevada Secretary of State  
7 records for Silver Bell reflect that appellant Steve Vogel is the registered agent and a Director,  
8 Marlene Vogel is the President, Jenny Sjoden is the Treasurer, and Julie Crago is the Secretary.

9 In or around 2012, Laura Gibbs began undertaking efforts to establish ownership and  
10 control of Silver Bell and the Fencemaker Project. In August 2013, Ms. Gibbs purported to  
11 notice a shareholder meeting though appellant is not in possession of any documents or  
12 information to support that Ms. Gibbs had the right to do so or ever held a legal shareholder  
13 meeting. Ms. Gibbs purports to have held a special shareholders' meeting in October 2014 in  
14 Santa Rosa, California which, upon information and belief, was not lawfully held, violated the  
15 bylaws, and did not include a quorum required for any action to be taken. Ms. Gibbs also  
16 purports to have held a shareholder and board of directors meeting in December 2014 though no  
17 records have been provided as to where the meeting was held or to demonstrate a quorum of  
18 shareholders were present to vote at any such meeting where she purports to have – at one of  
19 these two meetings in 2014, both of which, upon information and belief, were unlawfully held  
20 (assuming they were in fact held at all) – removed the officers of Silver Bell and replaced them  
21 with herself, Robert Thein and Lee Warren. By letter dated March 14, 2015, Ms. Gibbs provided  
22 “notice” to shareholders such as Marlene Vogel of this purported action and that she was  
23 conducting an internal investigation of the “former” officers. To date, Ms. Gibbs has not  
24 produced any information to demonstrate lawful completion of either the purported shareholder  
25 meetings or any investigation.

26 Years of documents on file with the Nevada Secretary of State's office reflect the  
27 consistency in the officers and directors of Silver Bell including Ken Vogel, Marlene Vogel, and  
28 Jack Treu. Without authorization from the Officers and Directors of Silver Bell, on October 31,

1 2014, an individual by the name of Susannah Edwards who claimed to be a “representative” of  
2 Silver Bell, filed an annual list of officers replacing the valid existing officers and directors with  
3 new individuals apparently identified by Ms. Gibbs, including herself as Secretary and a Director  
4 of Silver Bell.

5 I am not clear how or whether Ms. Gibbs claims to have purportedly conveyed any right  
6 to First Liberty Power Corporation to apply for the permit at issue or to conduct any activity at  
7 the Fencemaker Project but Ms. Gibbs had no legal authority to do so. I recently learned through  
8 the Lovelock newspaper that First Liberty must remove ore by next month as runoff from the ore  
9 could potentially contaminate the nearby Humboldt River according to NDEP. I and Silver Bell  
10 object to NDEP having issued any permit to First Liberty and to First Liberty’s continued  
11 trespass on the Fencemaker Project that apparently now has led to a potential environmental  
12 concern.

13 Silver Bell did lease certain of the lands at issue to Stockpile Reserves in 2009 which  
14 apparently subleased its rights to First Liberty; however, that lease expired. First Liberty has no  
15 current right to be doing anything on these lands.

16 **III. GROUNDS FOR APPEAL**

17 First Liberty has no legal right to be on the property and is trespassing and, to the extent  
18 they are removing any minerals from the lands, converting property of Silver Bell. The issuance  
19 of the permit at issue has facilitated these unlawful acts and may result in damage to the lands  
20 and to Silver Bell. As a director, I respectfully request that you reconsider issuance of this  
21 permit and request documentation of First Liberty’s right to conduct any operations or activities  
22 on the Fencemaker Claims.

23 **IV. WITNESS LIST**

24 **Marlene Vogel, Julie Crago**

25 **V. ANTICIPATED LENGTH OF APPELLANTS’ CASE IN CHIEF**

26 **Two hours**

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**VI. CONCLUSION**

Based on the foregoing, I respectfully request that you reconsider the permit you issued and direct First Liberty to provide evidence of its right to be conducting the proposed activities at the Fencemaker Project authorized under the permit at issue. Continued activities by First Liberty at the Fencemaker Project are causing significant harm to Silver Bell and the lands at issue.

DATED this 28<sup>th</sup> day of September, 2016.

  
Steve Vogel

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs LLP and not a party to, nor interested in, the within action; that on September 28, 2016, a true and correct copy of the foregoing document was served as noted below:

Valerie King, Executive Secretary  
Nevada State Environmental Commission  
901 S. Stewart Street, Suite 4001  
Carson City, Nevada 89701  
[vking@ndep.nv.gov](mailto:vking@ndep.nv.gov)

**VIA EMAIL**

Micheline Fairbank, Esq.  
100 N. Carson Street  
Carson City, Nevada 89701  
[MFairbank@ag.nv.gov](mailto:MFairbank@ag.nv.gov)

**VIA EMAIL**

  
Steve Vogel



**EXHIBIT A**

**EXHIBIT A**

RUN TIME: 12:42 PM

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
CLAIM NAME/NUMBER INDEX (ALPHA ORDER)  
by County

RUN DATE: 06/27/2016

GEO STATE: NV

Page 1 of 1

County : PERSHING

LEGAL DESC

<u>Claim Name/Number</u>	<u>Serial No</u>	<u>Claimant</u>	<u>MER</u>	<u>TWN</u>	<u>RANGE</u>	<u>SEC</u>	<u>SUBDIV</u>	<u>Location Date</u>	<u>Case Closed</u>
FENCEMAKER # 1	NMC269639	SILVER BELL MINING DEV INC	21	0250N	0370E	006	NE	05/04/1983	
FENCEMAKER B	NMC269640	SILVER BELL MINING DEV INC	21	0260N	0370E	031	SE	05/04/1983	
FENCEMAKER C	NMC269641	SILVER BELL MINING DEV INC	21	0250N	0370E	006	NE	05/04/1983	
FENCEMAKER D	NMC269642	SILVER BELL MINING DEV INC	21	0260N	0370E	031	SE	05/04/1983	
FENCEMAKER E	NMC269643	SILVER BELL MINING DEV INC	21	0250N	0370E	031	SE	05/04/1983	