

Jefferson Mining District

ASSEMBLED

Memorandum of Law

Responding to the notion posited in evasion of official duty subsequent the order of California judge HON GILBERT OCHOA, in KIMBLE, et al., v HARRIS, et al., (San Bernardino County Case No. CIVDS1012922), that an Oregon court must re-adjudicate again a federal pre-emption ruling with respect to national General Mining Law entries where a California court finds there is no triable issue of material fact on the issue of Federal Preemption and as a matter of law and in actual fact granting summary adjudication as a matter of law for each cause of action for federal preemption for Oregon recognizance, and where the order summarily declares:

Finding nothing justiciable, no triable issue of material fact as a matter of law and in actual fact:

“1) The Court finds there is no triable issue of material fact on the issue of Federal Preemption and that as a matter of law and in actual fact”;

Identifying an unlawful attainder and conduct prohibited to every State:

“that the State's extraordinary scheme of requiring permits and then pursuant to Fish and Game Code section 5653.1 refusing and or being unable to issue permits for years stands “as an obstacle to the accomplishment of the full purposes and objectives of Congress”;

Granting summary adjudication as a matter of law, upholding the national mining law as granted:

“2) The Court grants summary adjudication as a matter of law of the first cause of action for federal preemption”;

“3) The Court grants summary adjudication as a matter of law of the fourth cause of action for federal preemption”;

“4) The Court grants summary adjudication as a matter of law of the second cause of action for federal preemption”;

And affirming the national mining law without reservation:

*“5) The California Department of Fish and Wildlife s motions for summary adjudication
.. are denied for these same reasons”;*

“IT IS SO ORDERED.”

– HON GILBERT OCHOA, Judge of the Superior Court, 5-1-14, *nunc pro tunc*.

Upon the as yet unsupported, as is found unsupportable, even criminal, notion posited upon that which a State of California judge adjudicated was federally pre-emptive settled as a matter of law and fact upon the state of California, that an Oregon court would need to re-adjudicate the matter again, despite the Oregon supreme court expanding upon the same, Gold Hill, infra, See:

A), The Full Faith and Credit Clause, Article IV, Section 1:

“Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”

This requiring the various states SHALL recognize legislative acts, public records, and judicial decisions of the other states within the United States, resolving any perceived issue; or hereby,

B), The Supremacy Clause, Article 6, Clause 2:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”;

C), The contractual duties and obligations thereby, certain of the mineral estate, those *valuable mineral deposits*, disposed by grant Act of Congress shortly after, The Admissions Acts of 1859:

Preamble

Whereas the people of Oregon have framed, ratified and adopted a constitution of state government which is republican in form, and in conformity with the Constitution of the United States and have applied for admission into the Union on an equal footing with the other states; therefore –

4. Propositions Submitted to People of State

The following propositions be and the same are hereby offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit:

. . . “provided, that the foregoing propositions, hereinbefore offered, are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, that said state shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof;” [emphasis added]

D), The General Mining Law, the Act of May 10, 1872, amending prior, is a settled pre-emptive Congressional soil disposal law grant containing express and implied contractual obligations, such as “*exclusive possession and enjoyment*”, 30 USC 26, including self-determinant Livelihood, and fiduciary relationships, equitable title held in trust for the entryman, the beneficial title securing the soil of which is the Location Notice of record or by *pedis possessio*, whereby all mining claims “*are real estate*” having “*a legal estate therein*”, ORS 517.080, providing a court may only affirm but not question or interfere with these disposal Acts;

E), The United States Constitution forbids legislative *bills of attainder* under Article I, Section 9: The provision forbidding state law Bill of Attainder, Article I, Section 10, an act of the legislature by which one or more persons are declared to be attainted, i.e., dishonored, disgraced, accused or their property confiscated or injured, reflects the importance that the framers attached to this issue; “*Bills of attainder, ex post facto laws, and laws impairing the obligations of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation.*” --- James Madison, Federalist Number 44, 1788:

Article I, Section 9

“No bill of attainder or ex post facto Law shall be passed.”

Article 1, Section 10, Clause 1

“No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.”;

F), That the U.S. Constitution clauses forbidding attainder laws serve two purposes; First, they reinforce the separation of powers by forbidding the legislature to perform judicial or executive functions; Being the result of any acts of legislature would of necessity take the form of a bill of attainder. Second, they require due process, which is partially reinforced by the Fifth Amendment to the Constitution, the disposal of certain part of the mineral estate being property in the fullest sense and a lawful possession and enjoyment of which is to be secured as if patent issued and against any Bill of Attainder dispossession without due process or compensation to the affected grantee class, notwithstanding the additional ex post facto nature and trustee breach in doing so:

Fifth Amendment to the Constitution for the United States of America

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

G), A prior Oregon adjudication having affirmed the settled subject matter: Referencing in relevant part, from A TREATISE ON THE AMERICAN LAW RELATING TO MINES AND MINERAL LANDS "WITHIN THE PUBLIC LAND STATES AND TERRITORIES GOVERNING THE ACQUISITION AND ENJOYMENT OF MINING RIGHTS IN LANDS OF THE PUBLIC DOMAIN, By CURTIS H. LINDLEY, of the San Francisco Bar, 1914, VOLUME II, Page 1203, SINCE ENACTMENT OF GENERAL MINING LAWS. § 539:

“As was said by the supreme court of Oregon⁴², the general government itself cannot abridge the rights of the miner. There are equitable circumstances binding upon the conscience of the governmental proprietor that must never be disregarded. Rights have become vested that cannot be divested without the violation of all the principles of justice and reason.⁴³ The same fundamental rules of right and justice govern nations, municipalities, corporations, and individuals.⁴⁴ The government may not destroy the locator's rights by withdrawing the land from entry or placing it in a state of reservation.⁴⁵”;

H), Notwithstanding vaunted opinion to the contrary, The Property Clause of the U.S. Constitution is inapplicable, except as obligation. And this despite Supreme Court recognition of power therefrom “*without limitation*”, United States v Gratiot, 14 Pet. 526, 39 U. S. 527, for the reason this only applies to government mineral possession of unappropriated U.S. Territory. The mineral grant after acceptance of the Admissions Acts to Statehood obligates Congress and the State to honor the express and implied contracts, or as Sovereign fulfillment thereof, evidenced in the General Mining law conveying to all qualified those certain valuable deposits of the mineral estate, are not any United States mine or United States property but disposed to the entryman who “*shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations*”, 30 USC 26, held “*even as against the United States which nevertheless retains title to the land.*” Granite Rock Co. v California Coastal Commission, 1984;

I), Jefferson Mining District jurisdiction being competent regulation authority embracing 4 states concurs with finding 1) above of the judge of California as a matter of law within the district;

J), The Jefferson Mining District, et al., v Kitzhaber, et al., 2013, default judgment in equity, enjoining the major political parties members, Executive Agencies, or the Bar Association members, including judges of the State of Oregon, from interfering or hearing matters involving producers or granted mineral interests by way of admission of felonious and treasonous conduct under color of lawful authority Sustainably destroying the republican form of representative government, through conflict of interest, or having no lawful basis to hear and determine matters settled in law, or that these have failed their State fiduciary duties by the settled Cause of the suit;

4 2 Gold Hill Q. M. Co. v. Ish, 5 Or. 104, 11 Morr. Min. Rep. 635.
4 3 To the same effect, see Merced M. Co. v. Fremont, 7 Cal. 317, 327, 68 Am. Dec. 262, 7 Morr.
Min. Rep. 313; Conger v. Weaver, 6 Cal. 548, 557, 65 Am. Dec. 528.
4 4 United States v. Northern Pac. R. R., 95 Fed. 864, 880, 37 C. C. A. 290.
4 5 Military and National Park Reservations. Opinion Assistant Attorney-General, 25 L. D. 48;
Instructions, 32 L. D. 387.

K), Then consequently, that those whom would say this subject matter is not settled in law sufficient to preclude the question of an expectation for interference by the Oregon Courts or to adversely affect any grantee or appropriator are identified at least committing Felony conduct under Oregon statute:

THEFT AND RELATED OFFENSES

164.015 "Theft" described. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

- (1) Takes, appropriates, obtains or withholds such property from an owner thereof;
- (2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;
- (3) Commits theft by extortion as provided in ORS 164.075;
- (4) Commits theft by deception as provided in ORS 164.085; or
- (5) Commits theft by receiving as provided in ORS 164.095. [1971 c.743 §123; 2007 c.71 §47],

164.075 Theft by extortion. (1) A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

- (a) Cause physical injury to some person;
- (b) Cause damage to property;
- (c) Engage in other conduct constituting a crime;
- (d) Accuse some person of a crime or cause criminal charges to be instituted against the person;
- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
- (g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- (h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony. [1971 c.743 §127; 1987 c.158 §27; 2007 c.71 §48],

COERCION

163.275 Coercion. (1) A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

- (a) Unlawfully cause physical injury to some person;
 - (b) Unlawfully cause damage to property;
 - (c) Engage in conduct constituting a crime;
 - (d) Falsely accuse some person of a crime or cause criminal charges to be instituted against the person;
 - (f) Testify falsely or provide false information or withhold testimony or information with respect to another's legal claim or defense; or
 - (g) Unlawfully use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.
- (2) Coercion is a Class C felony. [1971 c.743 §102; 1983 c.546 §4; 1985 c.338 §1; 2007 c.71 §45];

L), More, someone making war on the laws of the United States, 18 U.S. Code § 2381 – Treason:
“Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States.”;

M), The obligation to “*make known*” these, imposed by:
18 U.S. Code § 4 - Misprision of felony

“Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.”;

Conclusion

Being settled law, there is no justiciable issue for any court, including in Oregon, to decide contrary to the prevailing nature of the congressional land disposal known as The General Mining Law which the State in its establishment undertook, on *equal footing*, to protect and secure and “*may not destroy the locator's rights by withdrawing the land from entry or placing it in a state of reservation*”, Oregon supreme court, Lindley, *supra*, or create “*an obstacle to the accomplishment of the full purposes and objectives of Congress*”, Kimble, *supra*; The forbearance or denial of the foregoing under color of authority bringing one into felony conduct, subject to self or other arrest whether state or federal judge, legislator, elected official, agency employee, or others similarly situated.

Duly executed with unanimous consent of the Assembly, and of Record, May 18, 2015.


Ron Gibson, Interim chairman.

cc: Theo Stanley. District Recorder.