Jefferson Mining District

The Date of April 7, 2013.

Notice of Proceedings at the Request of the Chairman of the Agriculture and Natural Resources Committee Before the Oregon Water Resources Department with the Attorney General in Attendance Warranting **OPPOSING** LEGISLATION **HB 2259.**

Please add this to the Bill Folder of HB 2259 making this notice a part of the Public Record.

House Speaker Tina Kotek, Brad Witt, and the Agriculture and Natural Resources Committee Members:

This document is to make a public record of the proceedings of the Chairman's request of the Oregon Water Resources Department, OWRD, to meet with the miners to work out the discrepancy between the proposed bill, the Oregon water law and the granted right of appropriation and use the bill comes into conflict with. The meeting was held on April 4, 2013, with various mining districts, independent miner's, mining associations as well as other government agencies, such as Oregon Department of State Lands present.

In summary, the OWRD through General Council of the Attorney General are unwilling to recognize either federal or state law granting water appropriations, such as the Oregon Law, Act of 1899, clarifying the scope of the congressional grant Act of July 26, 1866; Section 1 of the Act of 1899, “use is hereby granted” acknowledging that there is no mineral development without water. The Attorney General produced no lawful authority and apparently intends to produce no authority for the state to compel an administrative imposition between the right of a water appropriator and the appropriation or the right to charge a fee or dictate the right of appropriation beyond the appropriation itself. The Attorney General failing also to produce where the state has received power, authority or jurisdiction to contravene the Congressional disposal of water to appropriators in the Act of 1866, not to the state. This question was directly posed to the Attorney General and the Water Department 4 times. Indeed this question, “Where has the state received power, authority, or jurisdiction to contravene the Congressional disposal of water to appropriators in the act of 1866?”, was the initiating impetus to the meeting. To this moment the question has not been lawfully answered by the state. Settled law predicts, being it is apparent the State intends dereliction of its duties and obligations, that we will not receive an answer being the state is by the grant disposal and the Admission Acts precluded from interfering and the State intends to interfere. The trustee status of the state is required to be that of the repository of water appropriations, the muniment of the water appropriated, and nothing more.

The following are highlights of the problems, in large part, some of fiduciary breach and some criminal in nature exposed in the meeting:

The presentation of the Attorney General evidenced:

1. Fraud By Omission, 2. Fraud By Misrepresentation, 3. Fraud By Collusion, 4. Fraud By Deprivation Of Rights, 5. Fraud In No Real Purpose Or Intent To Gather The Law, 6. Deprivation of the Truth or Applicable Facts, 7. Fraud By Covert Agenda, 8. Fraud By Evasion; 9. Done Under Color of Official Authority to Deprive Grantees of Their Property.

This is the second meeting with a State agency where the Attorney General and Agency has resorted to fraud to advance its wrongful bill. At this point in time we can only request this committee not become the accessory to fraud and felony activity it was willing to commit in passing HB 2248 to the Ways and Means Committee.

Other violation were of note in the meeting, in part, those of Violations of The U.S. and Oregon Constitutions, such as 1. Lack Of Due Process, 2. Unlawful Takings of Property, 3. Conversion Of Rights To Permission by Officials who have the duty to Know or Should Have Known the Law and Our Rights and to protect and secure the same.

Special note is made that the State agency officials repeatedly stated they did not know much, if anything, about the mining law, or were in attendance to learn more about the mining law. This means these officials are proceeding in ignorance. This begs the question, Where no agency in attendance understands the mining law, where is the evidence fulfilling the duty to know the law so that any agency determination shall not come in conflict with the Mining Law?

The OWRD deferred its duty to know the law to an assistant to the Attorney General, Attorney General, in attendance. It must be noted, later in the meeting, after the Attorney General had made extensive input into the proceeding, however wrongful, we were told that the Attorney General was neither there for the miners or for the agency.

Additionally, it was disclosed that until the OWRD had decided how much it would cost it hadn't decided to ask the Attorney General for advice. To be sure, the agency, or Tom Paul, was more interested in the cost of an opinion than that he or the agency would be violating the law regardless of cost to the state. This begs the question, whom was the Attorney General there for and what was the intention of the scripted presentation?

It was further disclosed that we, the miners, and by extension then other lawful appropriators, were not to expect any answer from the Attorney General, whether or not through the Agency, to the question posed forming the meeting that the Representative Committee chair, Brad Witt, ordered was required to deal with the miner's granted water rights, whether vested, or by mere use, whether by appropriation or non-consumptive priority, or as the Comment of Jefferson Mining District of record exposed prior as the bill wrongly and adversely affects.

Another tactic of the Attorney General was to attempt to dismiss our presentation of the law as mere opinion, the agency jumping on this to assert that it would agree to disagree.

Critically, the agency nor the AG can agree to disagree with settled and existing law. Jefferson Mining District asserts no opinion on the law, merely acts to see it properly carried out to protect property owners contrary to the apparent intention of the Agency and Attorney General.

More importantly, proving great resistance to honor existing law, the Attorney General used all manner of artifice to try to convince the miners that they have no rights to appropriate water, even to the point of suggesting that every water law prior to 1909, “those old laws”, whether federal or state, were superseded by the Oregon Water Act of that year.

Another deception attempted was to try to limit the vested nature of the application of the water grants and law to pre-1909 water adjudications. This limited scope of application imposed by the Attorney General is certainly refuted by Oregon statutes also acknowledging all uses, not merely vested rights, or only adjudicated rights, reference, in pertinent part, ORS 537.120, "; but nothing contained in the Water Rights Act shall be so construed as to take away or impair the vested right of any person to any water **or to the use of any water.**" [emphasis added to uses.]

As to the prior notion that the 1909 water law superseded all of, as the Attorney General wrongly characterized, "those old laws" or prior grants, the Department was advised before taking reliance upon the opinion of the Attorney General to check into the settled law as regards interpretation of Legislative grants and as to the relation back principle, and as to their current or "present" application, as well as the estoppel against grantor interference, reference Fletcher v. Peck 1810. Indeed, a quick review of the current statutes recognizing the 1899 water law, ORS 541.110 to 541.130 "APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER UNDER 1899 ACT ", or to the United States, reference, ORS "541.250 Cession to United States not rescinded. Nothing in ORS 541.220 to 541.240 shall be construed as rescinding the cession by the state to the United States of lands, as provided in chapter 5, Oregon Laws 1905", provides sufficient proof that for the Attorney General to incessantly regurgitate that the 1909 water law superseded all prior water laws is a fraud of omission to accurately state the law and a felony where this fraud is being used to deprive any grantee of their water, obligations, and livelihood.

More serious is the national and state constitutional implications, influencing this committee to disregard its self-executing duty to arrest infringements, reference Buckley supra.

The Legislature is further reminded, as was the Attorney General and the agency, of the special, *ex officio*, relationship between the state and any mining district; The mining districts being authorized to record water appropriations, reference Oregon Laws Act of 1892.

The Water Law Act of Oregon itself contains many savings clauses for the prior state and congressional water appropriation grants to prove the Attorney General is derelict in the duty to not only protect the property conveyed by Congress. The state is to honor the disposal acts of Congress. The state is required by its establishment agreement ceding power for such disposal, relinquishing all authority and jurisdiction to condition or interfere with water appropriations.

There is much more which can be exposed that is wrong with what was presented and misrepresented in the meeting that the rigors of a legislative process not conducive to due process will not tolerate here in further explanation, lest we lose the audience of the committee. And it does little to recite the Mining Law to those having a duty to know it but will not or where any particular State actor's intent is to divest the public of their granted property.

In Closing, in this notice of the wrongs of the Executive Branch, we observe that It Was Once Said "When One Is Uninformed, but Now has Been Informed, One Either Chooses To Admit One Is Informed, Or One Chooses Not To Be Honest".

Being that the Agency and Executive have been informed in the meeting that they misrepresent the law and by the scripted presentation evidence having an agenda contrary to law, not declaring being informed, instead obstinate in the fraud to evade being informed, the duty to know notwithstanding, we must observe the Executive chooses to be dishonest.

Dishonesty is no basis for lawful authority or jurisdiction. The Executive Branch has not shown the lawful authority to interfere with water appropriator's rights. The Oregon laws and statutes forbid this. The Executive branch has failed to meet the demands of the law or meet the miner's or other's lawful right to granted use of the water acknowledged at ORS 537.120, in pertinent part, "; but nothing contained in the Water Rights Act shall be so construed as to take away or impair the vested right of any person to any water or to the use of any water.". The bill proposal must fail that it not aid and abet the commission of a felony under Oregon Law, ORS 164.075, and a fiduciary breach under federal law, and the contract at the establishment of the state itself, the legislature as an accessory.

We further observe that the Legislature must "serve as [the] "self-executing safeguard[s] against the encroachment or aggrandizement of one branch at the expense of the other." Buckley v. Valeo, 424 U.S. 1, 122 (1976)" by either arresting those promoting and advocating for the proposed legislation or let the proposal die in committee to save the treasury of the state from takings lawsuits that are surely to come of such dishonor of congressionally disposed property and aggrandizement of authority the state ceded to the grantee.

We would urge the Legislature with this parting thought: The U.S. Supreme Court has stated that "No state legislator, or executive or judicial officer can war against the constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

Oppose the proposed legislation.

I and the Assembly of Jefferson Mining District are available to answer your questions. Thank you for your considered lawful action to the found threats this Bill is.

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