

1 John F. Hutchens, *sui generis*, expert
2 Curator; Chancellor *ad hoc* & *ad litem*
3 P.O. Box 182, Canyon, Ca. 94516
4 925-878-9167
5 john@ironmountainmine.com

6 Two Miners and 8000 ACRES OF LAND IN SHASTA COUNTY - Grantee & Agent & Factor.

7 **eminent domain *quantum damnificatus quare impedit***

8 **INTERVENTION IN THE UNITED STATES OF AMERICA**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **MR. JOHN F. HUTCHENS, MINER *ad finem* & NORTHERN DISTRICT C10-05984 JCS**
11 **FARMER/DEBTOR/ STATESMAN/ DAD/ &**
12 **DISASTER ASSISTANCE DIRECTOR &**
13 **JOINT VENTURER, INSPECTOR, *curator* &**

14 **In re: JOHN HUTCHENS et al**
15 **TWO MINERS & 8000 ACRES OF LAND**
16 **(T.W. ARMAN and JOHN F. HUTCHENS,**
17 **real parties in interest), “Two Miners” under**
18 **God, indivisible, and on behalf of a class**
19 **Petitioners**

20 v.
21 **USDC-CES , Respondents**
22 **UNITED STATES Defendants**
23 **TITLE 18. U.S.C. CALIFORNIA, SEC. 19**
24 **§ 241. CONSPIRACY, FRAUDS, MALICE;**
25 **§ 242. DEPRIVATION OF RIGHTS UNDER**
26 **COLOR OF LAW. FRANCHISE TRESPASS;**
27 **§ 245. FEDERALLY PROTECTED RIGHTS;**
28 **RECKLESS NEGLIGENT**
ENDANGERMENT.abandonment are ex-
cluded from the definition of “owner or op-
erator” in CERCLA, and therefore are not li-
able under CERCLA Section 107(a).
CERCLA § 101(20)(D). There is also a third-
party affirmative defense available for gov-
ernment entities that acquire property “by es-
cheat, or through any other involuntary trans-
fer or acquisition, or through the exercise of
eminent domain authority by purchase or
condemnation.”

CERCLA § 101(35)(A)(ii).

COUNTERCLAIMS in Intervention. Writ of Right, Writ of Possession, POSSE: No. 2:91-cv-00768-JAM-JFM
QUO AVARRANTO ABSOLUTE SOVEREIGN MANDAMUS & PROHIBITION & ESTOPPEL

& RELATED CASES-CONCURRENT JURISDICTION
& USDC-CES Civ. 2:91-cv-00768- USCA No. 09-17411
& USCFC No. 09-207 L, &c. **CONDEMNATION**

"Resolution of Necessity"

& California Code of Civil Procedure section
& 1245.230 provides that in order to adopt a resolu-
& tion of necessity, the government agency must find
& (1) that the project for which the property is to be
& acquired is necessary; (2) that the property is neces-
& sary for the public project; (3) that the project is lo-
& cated in such a manner as to offer the greatest pub-
& lic benefit with the least private detriment; and (4)
& that an offer to purchase the property has been
& made. Unless there are extraordinary circumstances
& (such as gross abuse of discretion, fraud or bribery),
& the agency's finding that it needs the property is
& generally considered conclusive.

& **DANGERS TO OUR PEACE AND SAFETY –**
& **DESPOTISM & TYRANNY – NEGLIGENT AGENCY;**
& **FLOODING; LEAD PAINT ABATEMENT; MOLD;**
& **DETINUE SUR BAILMENT – ARREST OF DECAY**

& **DISPOSAL OF CERCLA SUPERFUND WASTES**
& **WITHOUT A MEMORANDUM OF**
& **UNDERSTANDING WITH THE PROPERTY**
& **OWNER – CERCLA EARLY TRANSFER**

1 **COMPLAINT**

2 THE PEOPLE & CITIZENS OF CALIFORNIA and JOHN F. HUTCHENS, Commissioner *ad hoc*,
3 sue the U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) and its Administrator, LISA
4 JACKSON, acting in her official capacity, and assert:

5 **JURISDICTION AND VENUE**

6 1. This is an action for declaratory and injunctive relief brought pursuant to the federal Administrative
7 Procedures Act (APA), 5 U.S.C. §§ 701-706. The court has jurisdiction under 28 USC § 1331.

8 2. The San Francisco Division of the U. S. District Court, Northern District of California, located in
9 San Francisco, San Francisco County, California, is an appropriate venue.

10 **THE PARTIES**

11 3. Plaintiff is the sovereign person and estate of John F. Hutchens, miner, curator and joint venturer,
12 confidential secretary of the sovereign estate of Mr. Ted Arman, proprietor of Iron Mountain Mines.
13 Petitioner is also Chancellor of the College of the Hummingbird, a small non-profit entity. Control of
14 nutrient loading from predominately non-point sources involves traditional States' rights and responsi-
15 bilities for water and land resource management which Congress expressly intended to preserve in the
16 Clean Water Act, 33 U.S.C. §1251(b) & (g). EPA's usurpation of the responsibility for nutrient criteria
17 violates the premise of cooperative federalism which Congress intended to underpin the CWA.
18 EPA's actions here are inconsistent with the federal-state balance that Congress struck in creating the
19 CWA. These sovereign and real party interests give John F. Hutchens standing to challenge the arbi-
20 trary and capricious interference by EPA in Iron Mountain Mines pollution abatement programs.

21 4. Plaintiff, administrator John F. Hutchens, supervises all matters pertaining to Iron Mountain Mines
22 in the State of California, pursuant to the United States and California Constitution, and is statutorily
23 charged with the duty to —protect the exclusive mining, water, human use, agricultural and hortical-
24 tural rights and interests of Mr. Ted Arman, Mr. John F. Hutchens, and Iron Mountain Mines, et al

25 **COUNT I -Necessity Determination**

26 Arbitrary and Capricious Standard of Review, 5 U.S.C. §§ 701-706

27 5. Plaintiffs contest EPA's bases for requesting small business panels Financial Responsibility Re-
28 quirements for Hard Rock Mining numeric nutrient criteria rule and TMDL Rule as final agency ac-

1 tion as provided by the federal Administrative Procedure Act, 5 U.S.C., §§ 701 – 706 and specifically
2 §706(2)(A) which allows this Court to set aside final agency action that is arbitrary, capricious, an
3 abuse of discretion, or otherwise not in accordance with law; all prior claims, prior demands, and prior
4 rights are again alleged in this paragraph) as if set out herein in full.

5 6. Section 706 of the Administrative Procedure Act, addressing the scope of judicial review of final
6 agency action, states in relevant part that —the reviewing court shall . . . hold unlawful and set aside
7 agency action, findings and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or
8 otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

9 7. The final rule is invalid because it is not based upon scientific water quality related factors within
10 the scope of the Clean Water Act;

11 **COUNT II - Necessity Determination**

12 **Final Agency Action in Excess of Authority, Short of Statutory Right, 5 U.S.C. §§ 701-706**

13 8.. The final rule is invalid as provided by the federal Administrative Procedure Act, 5
14 U.S.C., §§ 701-706 and specifically § 706(2)(C), because the necessity determination underlying those
15 rules is —in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; all
16 prior claims are again alleged in this paragraph as if set out herein in full.

17 9. A necessity determination under § 303(C)(4)(B) must be a science-based decision based upon a de-
18 termination that water quality criteria authorized by, and within the scope of, the Clean Water Act are
19 necessary to protect the designated uses of a State’s surface waters.

20 **COUNT III - Necessity Determination**

21 **Failure to Observe Proper Procedures, 5 U.S.C. §§ 701-706**

22 10. The final rule is invalid as provided by the federal Administrative Procedure Act, 5 U.S.C., §§
23 701-706 and specifically § 706(2)(D) because the necessity determination underlying those rules was
24 promulgated —without observance of procedure required by law and if the necessity determination is
25 deemed invalid, then the final rule was promulgated in a fatally defective manner; all prior claims are
26 again alleged as if set out herein in full.

27 EPA failed to abide by the public notification and public consultation requirements of 40 C.F.R. 25.

28 **COUNT IV - Instream Criteria**

1 **Arbitrary and Capricious Standard, 5 U.S.C. §§ 701-706**

2 11.. Plaintiff challenges EPA’s final rule, 40 C.F.R. § 131.43(c)(2)(i), as final agency action as pro-
3 vided by the federal Administrative Procedure Act, 5 U.S.C. §§ 701 – 706 and specifically §
4 706(2)(A) which allows this Court to set aside final agency action that is arbitrary, capricious, an
5 abuse of discretion, or otherwise not in accordance with law; all prior claims are again alleged as if set
6 out herein in full.

7 12.. As conceded by EPA in the preamble to its proposed rule, EPA was unable to establish a cause-
8 and-effect relationship between the instream concentrations of nutrients and an observable negative
9 biological response when reviewing data from Iron Mountain Mine streams.

10 13.. The failure to establish a cause-and-effect or dose-response relationship means that EPA cannot
11 establish the instream concentration at which negative environmental impacts occur in California’s
12 freshwater streams i.e., EPA’s rule lacks an adequate scientific basis.

13 **COUNT V - Instream Criteria**

14 **Final Agency Action in Excess of Authority, Short of Statutory Right, 5 U.S.C. §§ 701-706**

15 14. Plaintiff challenges EPA’s final rule, 40 C.F.R. § 131.43(c)(2)(i), as final agency action as pro-
16 vided by the federal Administrative Procedure Act, 5, U.S.C., §§ 701-706 and specifically §
17 706(2)(C), which allows this Court to set aside final agency action that is —in excess of statutory ju-
18 risdiction, authority, or limitations, or short of statutory right; we reallege all prior claims.

19 15.. EPA’s numeric nutrient criteria for California’s streams are not protective of the designated uses
20 for those streams and therefore beyond the scope of EPA’s rulemaking authority in that:

21 A. The criteria are not based upon a dose-response or cause-and-effect relationship
22 and therefore there is no scientific basis to support EPA’s assertion that maintaining a given instream
23 concentration of TN or TP is necessary to protect the waterbody from negative impacts;

24 B. The criteria are based upon a reference water approach that does not establish
25 cause and effect. EPA has established threshold principles that all water quality criteria should meet.
26 See Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic
27 Organisms and Their Use (USEPA 1985). The purpose of water quality criteria is to protect aquatic
28 organisms and their uses from unacceptable effects. See *id.* at vi. Proper criteria derivation requires the

1 establishment of a cause-and-effect relationship to ensure that regulation of the pollutant is necessary
2 and will produce the desired effect. *Id.* at 15- 16, 21. For materials that have a threshold effect (like
3 nutrients), the threshold of unacceptable effect must be determined. *Id.* at 8. As applied by EPA, the
4 criteria did not include sufficient nutrient data to properly characterize the reference waters and there-
5 fore could not be used to predict the biological reaction of unrelated surface waters to instream nutri-
6 ent concentrations.

7 **Count VI - Lakes Criteria**

8 **Arbitrary and Capricious Standard, 5 U.S.C. §§ 701-706**

9 16. Plaintiff challenges EPA’s final rule, 40 C.F.R. § 131.43(c)(1), as final agency action as provided
10 by the federal Administrative Procedure Act, 5 U.S.C., §§ 701 – 706 and specifically §706(2)(A)
11 which allows this Court to set aside final agency action that is arbitrary, capricious, an abuse of discre-
12 tion, or otherwise not in accordance with law; we reallege all prior claims.

13 17. The Clean Water Act does not require, and EPA has no authority to mandate, criteria that are more
14 stringent than naturally occurring background conditions.

15 **Count VII - Downstream Values for Lakes,**

16 **Arbitrary and Capricious Standard, 5 U.S.C. §§ 701-706**

17 18. Plaintiff challenges EPA’s final rule, 40 C.F.R. § 131.43(c)(2)(ii), as final agency action as pro-
18 vided by the federal Administrative Procedure Act, 5 U.S.C., §§ 701 – 706 and specifically §
19 706(2)(A) which allows this Court to set aside final agency action that is arbitrary, capricious, an
20 abuse of discretion, or otherwise not in accordance with law; all prior claims are again alleged in as if
21 set out herein in full.

22 . EPA’s final rule requires that flows into a lake meet the TP and TN values for the lake at the point of
23 entry. Therefore, if a lake does not meet standards, the IPV for all streams in the watershed must be
24 reduced even if they do not cause or contribute to the lake’s failure to meet the required limits. As a
25 result, the IPVs for **all** influent streams would have to be reduced below the levels needed to protect
26 the streams themselves. This imposes an unreasonable and arbitrary requirement on the upstream
27 components.

28 **Count VIII - Criterion for Springs**

1 **Arbitrary and Capricious Standard, 5 U.S.C. §§ 701-706**

2 19. Plaintiff challenges EPA’s final rule, 40 C.F.R. § 131.43(c)(3), as final agency action as provided
3 by the federal Administrative Procedure Act, 5 U.S.C., §§ 701 – 706 and specifically §706(2)(A)
4 which allows this Court to set aside final agency action that is arbitrary, capricious, an abuse of discre-
5 tion, or otherwise not in accordance with law; all prior claims are again alleged in this as if set out
6 herein in full.

7 20. EPA’s finalization and application of the unadopted State criterion to all springs within the State of
8 California is arbitrary, capricious and contrary to law.

9 **Count IX - Failure to Exclude from the Rule is Arbitrary and Capricious**

10 21. Plaintiff challenges EPA’s final rule as final agency action as provided by the federal
11 Administrative Procedure Act, 5 U.S.C., §§ 701 – 706 and specifically § 706(2)(A) which allows this
12 Court to set aside final agency action that is arbitrary, capricious, an abuse of discretion, or otherwise
13 not in accordance with law; all prior claims are again alleged in this paragraph sixty-six (66) as if set
14 out herein in full.

15 22. In the final rule, EPA fails to exempt waters with existing EPA-approved nutrient TMDLs from
16 the rule. Failure to recognize the already approved TMDLs is a change in EPA’s position on the ability
17 of those limits to meet the requirements of the CWA. Nutrient TMDLs include numeric limits similar
18 to that of water quality criteria in that both the TMDLs and the water quality criteria must protect the
19 designated use of the applicable waters. See 44 U.S.C. §§ 1313(c)-(d); 40 C.F.R. §§ 130.2(j) and 130.7
20 Such a change in position without adequate explanation and support in the record is arbitrary and ca-
21 pricious and an abuse of discretion.

22 **Count X - Failure to Fully Disclose**

23 23. The Rulemaking’s Technical Basis, Regulatory Implications, and Economic Impacts Constitutes a
24 Failure to Observe Procedures Required by Law. 5 U.S.C. § 706(2)(D).

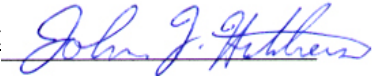
25 24. Plaintiff challenges EPA’s final rule as final agency action as provided by the federal
26 Administrative Procedure Act, 5 U.S.C., §§ 701 – 706 and specifically § 706(2)(D) which allows this
27 Court to set aside final agency action made without observance to procedures required by law; all prior
28 claims are again alleged as if set out herein in full.

1 25. Throughout this rulemaking process, EPA has failed to disclose the rulemaking's technical basis,
2 regulatory implications, and economic impacts. Cf. 5 U.S.C. § 533(b). EPA was not forthcoming with
3 data, methods, analyses, or clear explanations of rule provisions. EPA has not explained the Science
4 Advisory Board's critical review of EPA's nutrient criteria derivation method. EPA has incorrectly
5 represented that this rule will have, at most, only indirect impacts on regulated entities. EPA has con-
6 sistently understated the economic implications of the rule on California. Contrary to the requirements
7 of the Administrative Procedure Act, EPA conducted this rulemaking in a manner that frustrated the
8 public's right to effectively participate in the process.

9 **RELIEF REQUESTED**

10 Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff as follows:

- 11 1. Finding the consent decree arbitrary, capricious an abuse of discretion, or otherwise not in accor-
12 dance with law; B) in excess of statutory jurisdiction, authority, or limitations, or short of statutory
13 right; and, C) that the necessity determination and therefore the final rule were prepared without ob-
14 servance of procedure required by law;
- 15 2. Finding 40 CFR §§ 131.43(c) (1), (2) and (3) to be final agency action in violation of the federal
16 Administrative Procedures Act: the provisions are: A) arbitrary, capricious an abuse of discretion, or
17 otherwise not in accordance with law; B) in excess of statutory jurisdiction, authority, or limitations,
18 or short of statutory right; and or, C) prepared without observance of procedure required by law;
- 19 3. Enjoining the Administrator and EPA from failure to remove Iron Mountain Mine from the NPL.
- 20 4. Grant any further relief this Court may deem just and proper.
- 21 5. REMISSION, REVERSION, DETINUE SUR BAILMENT-TROVER, QUANTUM VALEBAT,
- 22 6. **CONDEMNATION BY COMMISSION: *QUANTUM DAMNIFICATUS QUARE IMPEDIT***

23 The Chancellor has the right to make all regulations that are necessary and proper for the execution of
24 his office and to carry on and conduct the mining businesses. Signature: 

25 I, John F. Hutchens, hereby state that the same is true of my own knowledge, except as to matters which are
26 herein stated on my own information or belief, and as t those matters, I believe them to be true.

27 Date: December 20, 2010 Signature:  *parens, parens, parens.*

28 Verified affidavit: /s/ John F. Hutchens, **CURATOR / JOINT VENTURER – *ad hoc & ad litem.***