John F. Hutchens, joint venturer, expert
T.W. Arman, owner, grantee, joint venturer,
1. P.O. Box 182, Canyon, Ca. 94516, 925-878-9167
2. P.O. Box 992867, Redding, CA 96099 530-275-4550
Arman & Hutchens, owner & operator, aka "Two Miners" *absence of delectus personae.*
Jardine Matheson Group, Iron Mountain Inv. Co., Stauffer, Aventis, AstraZeneca, Bayer Crop, &c.

UNITED STATES DISTRICT COURT EASTERN DISTRICT of CALIFORNIA

ADMINISTRATIVE INTERVENTION DECLARATORY & INJUNCTIVE RELIEF
ARREST OF JUDICIAL TAKING BEFORE JUDGMENT INTERLOCUTORY APPEAL
EMERGENCY CITIZEN SUIT INTERVENTION WITH PROBABLE CAUSE

IRON MOUNTAIN MINES, INC. &
T.W. ARMAN, DEFENDANTS
v.
UNITED STATES OF AMERICA
PLAINTIFFS

IRON MOUNTAIN MINES, INC. &
T.W. ARMAN, DEFENDANTS
v.
CALIFORNIA
PLAINTIFFS

JOINT AND SEVERAL TRESPASSERS!
VIOLATIONS: §§ 1983, 1985, 1986.
§ 241, § 242, § 245, § 3729. §§15 §1110b
CONSTITUTIONAL CIVIL RIGHTS §905
CERTIORARIFIED MANDAMUS §1257
NEGLIGENCE §803 FALSE CLAIMS
§706 §2201 §2403 § 2409a §2410 §2680

) Civil No. 2:10-CV-0232 FCD KJM PS
) HONORABLE JUDGE: JOHN A. MENDEZ
) NOTICE: APPEARANCE DE BENE ESSE
) COMPLAINT IN INTERVENTION & FOR
) LEAVE TO FILE QUO WARRANTO:
)QUANTUM DAMNIFICATUS; QUANTUM
)MERUIT; QUANTUM VALEBAT, QUARE
)IMPEDIT; NAME CLEARING HEARING!
) FLAT CREEK MINING DISTRICT PRIOR
)RIGHT LAW OF THE APEX, THE ARMAN
)AND HUTCHENS CONSOLIDATED CLAIM,
) i.e. IRON MOUNTAIN MINES, INC. ET AL
) FREEHOLD ESTATE WRIT OF ENTRY,
) WRIT OF RIGHT, WRIT OF POSSESSION.
) INNOCENT LANDOWNER DEFENSES
) TAKING REQUIRING COMPENSATION
) UNLAWFUL DETAINER, QUIET TITLE.

I. INTRODUCTION

Intervener John F. Hutchens seeks to exercise his right under 42 U.S.C. § 9659(a) to intervene as defendant in the above-captioned matter on all questions of law and fact brought forth in these proceedings. This action was brought by the Plaintiffs under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., petitioner exercises the right to intervene by 42 U.S.C. § 9659(a)(1), as well as of RCRA 7003.

II. PARTY

John F. Hutchens is joint venturer with T.W. Arman, owner of Iron Mountain Mines, Inc. (the named defendants in this action), to recycle wastes disposed by the EPA sludge treatment process at the Iron Mountain Mines, Inc. superfund site. These wastes, now in excess of 500 thousand tons, contain valuable quantities of recoverable base and precious metals including gold, silver, copper, aluminum, zinc, magnesium, cadmium, titanium, uranium, and other metals, in a mixture of calcium sulfate (gypsum) with iron sulfates and iron oxides and oxy-hydroxide nano-materials. Since the engagement in the joint venture, petitioner and defendants have expanded their relationship with vested and accrued rights and responsibilities including implementing the proper remedy project management and administration at Iron Mountain Mines, Inc, terminating the EPA's activities at Iron Mountain Mines, Inc., the restoration of the rights, privileges, and immunities of patent title, and the complete development of the Iron Mountain Mines, Inc. properties.

III. JURISDICTION AND VENUE

…bills to take testimony de bene esse, are sustainable only in aid of a suit already depending. 1 Sim. & Stu. 83. The latter may be brought by a person who is in possession, or out of possession; and whether he be plaintiff or defendant in the action at law. Story, Eq Pl. §307 and 303, note; Story on Eq. 1813, note 3. In many respects the rules which regulate the framing of bills to perpetuate testimony, are applicable to bills to take testimony ae bene esse.: **Bill - Chancery Practice**, * A complaint in writing addressed to the chancellor, containing the names of the parties to the suit, both complainant and defendant, a statement of the facts on which the complainant relies, and the allegations which he makes, with an averment that the acts complained of are contrary to equity , and a prayer for relief and proper process. Its office in a chancery suit, is the

same as a declaration in an action at law, a libel in a court of admiralty or an allegation in, the spiritual courts. Certiorari and Intervention, See: Western Properties v. Shell Oil 358 F.3d 678 Because, in an appropriate case, the court might properly exercise its discretion under § 113(f)(1) to allocate a smaller portion or even no portion of the cleanup cost to a non-polluting PRP landowner, there is no reason to read such authority into § 107(a) against the limitations of the words of § 107(b)

IV. ADMINISTRATIVE & FACTUAL ALLEGATIONS

On January 26, 2010 I received an email link dated January 19, 2010 with a personal plea and invitation from Administrator of the Environmental Protection Agency Lisa P. Jackson, the gist of which is that from her "FIVE PRIORITIES FROM LAST YEAR, EPA… LISTENED TO COLLEAGUES AND LEARNED FROM EXPERIENCES, AND HAS SEVEN PRIORITIES FOR EPA'S FUTURE.

1. TAKING ACTION ON CLIMATE CHANGE, REDUCE DEPENDANCE ON FOREIGN OIL THAT THREATENS OUR ECONOMY AND NATIONAL SECURITY….

2. AIR QUALITY, REDUCING HARMFUL TOXICS, STRONGER STANDARDS…..

3. FOCUS ON SAFETY OF CHEMICALS, SIGNIFICANT AND LONG OVERDUE PROGRESS IN ADDRESSING CONCERNS OVER CHEMICALS IN OUR PRODUCTS, IN OUR ENVIRONMENT, AND IN OUR BODIES, AND ACCELERATING EPA WORK ON CHEMICALS OF CONCERN, INCREASING PUBLIC AWARENESS THROUGH THE INTEGRATED RISK INFORMATION SYSTEM AND TOXICS RELEASE INVENTORY, AND TOXIC RELEASE INVENTORY, AND SUPPORTING REFORM OF OUR NATIONS CHEMICAL LAWS, SO THEY KEEP PACE WITH THE CHEMICAL INDUSTRY.

4. ANOTHER PRIORITY IS CLEANING UP OUR COMMUNITIES, USING ALL THE TOOLS AT OUR DISPOSAL INCLUDING ENFORCEMENT AND COMPLIANCE

EFFORTS, WE WILL CONTINUE TO WORK TOWARDS SAFER HEALTHIER COMMUNITIES, REVITALIZING COMMUNITY BASED PROGRAMS LIKE SUPERFUND AND BROWNSVILLE CAN HELP GET TOXIC CONTAMINATION OUT OF COMMUNITIES, AND HELP PUT NEW DREAMS OUT THERE, AND WE WILL STEP UP AS NEEDED TO ASSIST LOCAL AREAS FACING EXCEPTIONAL ENVIRONMENTAL CHALLENGES AND HEALTH THREATS.

5. WE WILL FOCUS ON PROTECTING AMERICAS WATER. WATER QUALITY CAN HAVE PROFOUND HUMAN HEALTH IMPACTS, AND A RELIABLE SUPPLY OF CLEAN WATER IS ABSOLUTELY CRITICAL TO THE ECONOMIC GROWTH OF OUR COMMUNITIES. THE CHALLENGES AHEAD DEMAND TRADITIONAL MEASURES AND INNOVATIVE STRATEGIES, WE HAVE A RANGE OF BOTH TO SET IN MOTION, ADDRESSING POST CONSTRUCTION AGRICULTURAL AND STORM WATER RUNOFF, TO BETTER PROTECTING DRINKING WATER SUPPLIES, AND WE WILL ALSO REVAMP ENFORCEMENT STRATEGY, TO ACHIEVE GREATER COMPLIANCE ACROSS THE BOARD.

6. WE WILL BE EXPANDING THE CONVERSATION ON ENVIRONMENTALISM AND WORKING FOR ENVIRON MENTAL JUSTICE. WE ARE BUILDING AND REBUILDING RELATIONSHIPS WITH TRIBES, COMMUNITIES OF COLOR, YOUNG PEOPLE , AND ECONOMICALLY DISTRESSED CITIES, TOWNS, AND RURAL AREAS, THESE VOICES NEED TO BE PART OF OUR CONVERSATION, AND HAVE A PLACE AT THE DECISION MAKING TABLE, WE MUST AND WILL MAKE ENVIRONMENTAL JUSTICE A CONSIDERATION IN ALL OF OUR ACTIONS, AND I AM URGING YOU TO BRING VISION AND CREATIVITY TO THIS CHALLENGE.

7. LAST BUT CERTAINLY NOT LEAST, WE WILL CONTINUE BUILDING STRONG STATE AND TRIBAL PARTNERSHIPS, FISCAL CHALLENGES ARE PRESSURING STATE AGENCIES AND TRIBAL GOVERNMENTS TO DO MORE WITH LESS,

STRONG PARTNERSHIPS AND ACCOUNTABILITY ARE MORE ESSENTIAL THAN EVER, EPA WILL DO ITS PART TO SUPPORT STATE AND TRIBAL CAPACITY, AND THROUGH ITS STRENGTHENED OVERSIGHT, INSURE THAT PROGRAMS ARE DELIVERED NATIONWIDE.

THESE ARE OUR SEVEN PRIORITIES FOR 2010 AND BEYOND. ESSENTIAL TO ALL OF THEM IS A COMMITMENT TO WORK TOGETHER ACROSS PROGRAMS, REGIONS, AND ISSUES, TO SERVE THE AMERICAN PEOPLE AS ONE EPA, WE WANT A WORK PLACE THAT IS WORTHY OF OUR INCREDIBLE WORKFORCE. AND WE WANT TO BUILD THE MOST DIVERSE AND INCLUSIVE EPA IN HISTORY. SO THAT WE CAN MEET THE WIDE RANGE OF CHALLENGES AHEAD OF US. OUR SUCCESS WILL DEPEND UPON INNOVATION AND CREATIVITY IN BOTH WHAT WE DO AND HOW WE DO IT. I ENCOURAGE EVERYONE TO BE PART OF CONSTRUCTIVELY IMPROVING OUR AGENCY, AND LOOK FORWARD TO MEETING OUR CHALLENGES AS ONE EPA."

http://www.youtube.com/watch?v=I56ZeHmoDYc

You should recognize the actual emergency that exists, and protect the defendants and intervener with orders to commutate the insurance policies of Trust I and Trust II and immediately provide the funds for acquisition of best available technologies You should restore regulatory authority to the legislature of California, and law enforcement authority to Shasta County and the California dept. of Mines and Geology. You should recognize us members of a class action under Yick Wo.

A. Intervention de benne esse on the issues of fact set forth by Plaintiffs.

B. Petitioners automatic right to intervene under CERCLA, RCRA, and FRCP 24.

C. *Sua Sponte* review of prior rulings.

D. SET A DATE FOR NAME CLEARING HEARING

"Full relief and restore possession to the party entitled thereto" for absence of jurisdiction.

WRIT OF EQUITABLE ESTOPPEL! WRIT OF POSSESSION & EJECTMENT! JUDGEMENT OF THE COURTS ENJOINED, VACATED, AND SET ASIDE

Under California's civil procedure rules, trial courts have discretion to grant permissive intervention when: 1) the moving party's interest is "direct and immediate;" 2) allowing intervention will not "enlarge the issues in the litigation;" and 3) the balance of "reasons for the intervention outweigh any opposition by the parties presently in the action." These standards are comparable to the analysis that federal courts engage in when determining whether to allow permissive intervention under the Federal Rules of Civil Procedure. In exercising its discretion under the California rules, a trial court has to determine "whether the original action between the existing parties should be allowed to proceed undisturbed by an intervenor's claim; and the more indirect the connection of that claim with the issues raised in the original action, the less likelihood there is of the court permitting intervention." Petitioner meets all criteria of intervention and should be properly joined in this action. Defendants counsel should be retained.

Defendant's counsel has recommended that the court review Ninth Circuit precedent in light of Burlington. Petitioner also recommends review based upon Carson Harbor, (cited by plaintiffs in their memorandum in support of the consent decree and for entry of summary judgment.

Under *Carson Harbor*, the definition of what constitutes "disposal" has been limited. The holding also provides strong support for a defense to CERCLA liability where contamination has only passively migrated during the time of site ownership/operation, either within the confines of a site or from off-site sources.

You should review the case and reverse the findings as not supported by the evidence.

You should void and vacate the consent decree; you should void and strike the liens.

You should investigate the charges of malice, fraud upon the court, and negligent endangerment.

You should designate the petitioner PROJECT MANAGER QUO WARRANTO.

QUO WARRANTO INCIDENTAL AND PEREMPTORY ADMINISTRATIVE MANDAMUS

"One Co-tenant may recover the whole estate in ejectment against strangers."

King Solomon Co. v. Mary Verna Co. 22 Cal. App. 528, 127 P 129, 130

"The owner is not liable for pollution of stream incidental to placer mining, or to washing iron ore. It is classed among non-actionable injuries. Nor will such use of the stream be enjoined even

if an action lies, except in willful or extreme cases. Clifton Co. v. Pye 87 Ala. 468 6So 192. Hill v. King 4 M.R. 533. 8 Cal. 337, Atchison v. Peterson 1 M.R. 583 20 Wall 501.

California Statute Sec. 1426 7/1/09

In the absence of clearly expressed legislative intent, retrospective operation will not be given to statutes, nor, in absence of such intent, will a statute be construed as impairing rights relied upon in past conduct when other legislation was in force. *Union Pacific R. Co. v. Laramie Stock Yards, ante,* p. 231 U. S. 190.

The objective of the public trust is always evolving so that a trustee is not burdened with outmoded classifications favoring the original and traditional triad of commerce, navigation and fisheries over those uses encompassing changing public needs. *National Audubon Society v. Superior Court, supra,* at p. 434.

Section 5937 "is a legislative expression of the public trust doctrine." California Trout, Inc. v. State Water Resources Control Board, 255 Cal. Rptr. 184,209,212 (Cal. Ct. App. 1989». The public trust doctrine and section 5937 overlap, addressing the fisheries at different levels of generality. The public trust doctrine has long protected fisheries used by commercial and recreational fishers, and more recent case law has expanded the doctrine to include the general public's right to preserve fisheries and their related habitat for their intrinsic environmental value as ecological units. Marks v. Whitney, 6 Cal. 3d 251, 259,491 P.2d 374, 380 (1971) (establishing that the doctrine changes in tandem with changing public values and

scientific understanding) and National Audubon Soc'y v. Superior Court of Alpine Cty, 33 Cal.3d 419,435,658 P.2d 709 (Cal. 1983), cert denied, 464 U.S. 977 (1983).

(administrative agencies are not required to, nor should they, regulate the present and future within the inflexible limits of yesterday); Michigan v. Thomas, 805 F.2d 176 (6th Cir.1986) (Environmental Protection Agency could apply its definition of "reasonably available control technology" to disapprove proposed state dust rules where it had approved similar rules of other states, in light of new knowledge); cf. International Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers ofAm. v. Daniel, 439 U.S. 551, 566 n. 20,99 S.Ct. 790, 58 L.Ed.2d 808 (1979)

(deference due administrative agencies is due in part because of willingness to accord some measure of flexibility to an agency as it encounters new and unforeseen problems over time). Citing California Trout, Inc. v. Superior Court, 218 Cal.App.3d 187,266 Cal.Rptr. 788, 801 (1990) (ordering the water board to establish flow rates based on available data while proceeding with more elaborate studies), the Supreme Court of Hawaii directed the state water agency to use "the best information presently available" in protecting public trust values. In re Water Use Permit Applications, 94 Hawai'i 97, 9 P.3d 409 (Hawai'i, 2000). The Court emphasized the importance of comprehensive and pro-active planning in a region where growth and its attendant demands on groundwater outstrip the region's limited supply. The Court eloquently summed up the role of a water agency: "The constitutional framers and the legislature designed the Commission as an instrument for judicious planning and regulation, rather than crisis management. ... [The public trust] concept implies not only the power to protect the resources but the responsibility to do so long before any crisis develops [citing Stand. Comm. Rep. No. 77 in 1 Proceedings, at 688] . . .. [T]he water code should serve as a tool and an incentive for planning the wise use of Hawaii's water resources, rather than as a water crisis and shortage management mechanism [citing Stand. Comm. Rep. No. 348, in 1987 House Journal, at 126263]."

It is not possible to consider the relevant wildlife statutes without considering the framework of the public trust doctrine. The non-codified public trust doctrine remains important both to confirm the state's sovereign supervision and to require consideration of public trust uses in cases filed directly in the courts. National Audubon, 33 Cal. 3d 419 at n. 27. See also, Kootenai Envtl. Alliance v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085, 1095 (Idaho 1983) (Mere compliance with legislation is not sufficient). The government cannot act outside of the boundaries of the public trust doctrine with respect to public trust resources. San Carlos Apache Tribe v. Superior Court ex reI. Maricopa County, 193 Ariz. 195,972 P.2d 179, 199 (1999) ("The public trust doctrine is a constitutional limitation on legislative power ....").

2715. No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

Exactly what is "pollution" and under what circumstances does the pollution exclusion apply? The California Supreme Court recently addressed this question in MacKinnon v. Truck Insurance Exchange (2003) 31 Cal.4th 635.

The Court's decision is decidedly unhelpful in this regard; the Court admits that it has not provided a precise definition of "pollution" and that the issue is left open for future cases.

PRIOR RIGHTS, PATENT TITLE

In California, a complaint simply alleging the ownership by plaintiff of his mining location and the claim by defendant without right of an adverse interest has been held to allege enough.

In any event the party seeking to have a trust declared must make out a case against the patentee by evidence that is plain and convincing beyond reasonable controversy." It has been held that such a suit is clearly within the jurisdiction of the federal courts, regardless of the citizenship of the parties.*8 grantee who does not pay value or does not take innocently "a court of equity may, in a direct proceeding for that purpose, set aside such a patent or certificate, or declare the legal title under it to be held in trust for one who has a better right to it, in cases in which the action of the land department has resulted from fraud, mistake, or erroneous views of the law." **

In proceedings under Rev.Stat. §§ 2325, 2326 to determine adverse claims to locations of mineral lands, it is incumbent upon the plaintiff to show a location which entitles him to possession against the United States This is an adverse claims proceeding.

PATENTEES AS TRUSTEES.

In proper cases patentees will be held to be trustees for others equitably entitled to the land.

If the patentee bring ejectment, the trust may be set up as an equitable defense in Jurisdictions where such defenses are allowed.

Where a co-owner has been excluded from the patent the patentees become trustees for him to the extent of his interest, and it seems that he need not await the issuance of patent before suing. Laches will operate as a bar.

The court said that "the amended location certificate presupposes and is based upon an original. Halleck was only able to file an amended location certificate by reason of the fact that the original had been filed by his grantors," and accordingly he was seeking to reap a profit out of trust property. So an amended location of the major portions of the original location, made by one who"

JOHNSON v. YOUNG, 18 Colo. 62o, 628. 629, 34 Pac. 173.

"Cheesman v. Shreeve (C. C.) 40 Fed. 787. In BEALS v. CONE, 27 Colo. 473. <>2 Fac. 948, S3 Am. St. Rep. 92, a so-called amendment was called a relocation, and the location dated only from the new certificate. Prior to that time the ground had been located by others, so the relocation was Ineffective.

SHOSHONE MIX. CO. v. ROTER, 87 Fed. SOI. 31 C. C. A. 223. See Richards v. Wolling, 1)8 Cal. 195, 32 P. 971; Johnson v. Young, 18 Colo. (>25, 34 Pac. 173.

i9i Morrison's Mining Rights (13th Ed.) 135, 136. See Seymour v. Fisher, 16 Colo. 188. 27 Pac. 240.

182 HALLACK v. TRABER, 23 Colo. 14, 46 Pac. 110.

18S23 Colo. 15, l(i. 46 Pac. 110.

has parted with title to the claim, cannot be recognized as securing any right to him, but may secure a benefit for his grantee, if he acted as the grantee's agent for the purpose.

Qui tam

You should recognize that nano-molecular science has been woefully neglected by the United States of America for several decades as foreign countries have invested many times our percentage on R&D. Last year foreign patents were 4 times the U.S. in these areas.

Worse, it appears that their has been deliberate ignorance of actual information by agencies and personnel of the government to misrepresent and even demonize naturally occurring biological and chemical phenomena that could be researched and developed, but in-

stead have been misrepresented as endangering the entirely domesticated and not anadramous fish species of the Sacramento River and after 100 years falsely claimed emergency. The EPA is a defendant under FIFRA for the endangerment of Salmon and Trout throughout their range, see United States District Court Western District of Washington at Seattle, Case No. C01-0132C. The EPA is estopped by prohibition, laches, and equity.

You should recognize that on the admission of the Administrator of a need for a new approach to post construction storm water runoff, the need for conversation on environmentalism and working for environmental justice, the need and the requirement to revamp enforcement strategy to achieve greater compliance across the board, the need to build and rebuild relationships with communities and rural areas, and the need for all parties to be part of the conversation and have a place at the decision making table, and that the EPA must and will make environmental justice a consideration in all actions, and be accountable.

You should dismiss for lack of subject matter jurisdiction, and consider a taking claim.

We offer to create the Arman Research Institute, and to provide facilities for research and development of the biology and the resources of Iron Mountain Mine.

The sludge disposed at Iron Mountain Mine has been found to be the ideal precursor for bulk catalytic preparation of carbon nanotubes. We plan to do more with less.

You should immediately direct the orderly restoration of private property to T.W. Arman.

You should void and vacate the lien; you should strike CERCLA as unconstitutional law.

You should investigate the charge of political influence, corruption and abuse of law.

YOU SHOULD GRANT REMISSION, REVERSION, & DETINUE SUR BAILMENT

VOID AS UNCONSTITUTIONAL AN UNNECESSARY AND IMPROPER LAW

RIGHT OF PRESENT POSSESSION COMPELLED ON PRIORITY OF ABSOLUTE TITLE.

BOUNTY WARRANTS FREEHOLD ESTATE PATENT TITLE LAW OF THE APEX PREFERENCE RIGHTS GENERAL VERDICT.

January 27, 2010 **Signature:**_____

s/ **John F. Hutchens, grantee's agent, authorized representative, joint venturer; expert T.W. Arman and IMMI Special Deputy Warden of the Gales, Forests and Stannaries.**

INSTANT APPEAL FOR STAY UNDER 62 (g)(h), EMERGENCY REVIEW 27-3

The allegation of polluting the navigable waterways of the United States was brought by State Water Board officer James Pedri who was dissatisfied with State action at the site. The site was actively mined from 1895 to 1920, then kept on maintenance until WWII. Open pit mining began in the early 50's but ceased in 1963. The United States and California brought suit principally under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., for reimbursement of costs associated with the cleanup. You are called upon to determine whether, as a matter of law, those cleanup costs were "necessary" and whether certain of the defendants are" responsible parties" ("RPs") under CERCLA § 107(a), 42 U.S.C. § 9607(a). The touchstone for determining the necessity of response costs is whether there is an actual threat to human health or the environment; that necessity is not obviated when a party also has a religious, moral, business, or government reason for interfering in the cleanup. Because the district court erred in ignoring the ulterior motives that caused the alleged pollution and because there are genuine issues of material fact regarding whether Iron Mountain Mines response costs were, in fact, "necessary," you cannot uphold even a partial summary judgment on this ground. Even if you assume that those costs were necessary, you still must decide whether plaintiffs are liable, and the extent of the takings in this per se takings case, and if the governments are PRPs. Parsing the meaning of the term "disposal" in § 9607(a)(2) lies at the heart of this question. The Court concluded in Carson Harbor that the migration of contaminants on the property did not fall within the statutory definition of "disposal." Thus, on the CERCLA claim, you should reverse the previous district court's grant of partial summary judgment and find for T. W. Arman and Iron Mountain Mines, Inc. There is no evidence that the minerals from Iron Mountain Mine ever hurt anyone, and any remaining hazard to fish after 105 years (or was that 105 million years?) was insignificant in the face of the complete loss of spawning habitat from United States dams, ranching, farming and urban pesticide, and the complete reliance of the fishery on artificial reproductive techniques and human intervention. Compound these facts with the EPA's joint and several strict liabilities under FIFRA and ESA and it is apparent why a scapegoat was so essential to trying to preserve the EPA franchise. There was never any intention of trying to introduce migratory

fish for breeding into any waters above Keswick Lake, so there was never an actual threat to any fisheries. The navigable waterway of the United States is over 100 miles downstream, and fish spawning habitat 30 miles away. Without evidence of legally significant contamination, the government was unjustified in filing suit to gain access to private property for a response action under the Superfund law, see U.S. v. Tarkowski , No. 99 C 7308, N.D.Ill., Nov. 26, 2001]

Consequently, the victorious property owner can recoup his litigation costs.

John Tarkowski is an elderly, indigent resident of a 16-acre tract situated in Wauconda, Ill., an affluent community northwest of Chicago. Until he was disabled, he worked as a building contractor. Using surplus materials, he built his house many years ago when the area was a rural backwater. His yard is filled with what his upscale neighbors regard as junk — wooden pallets, tires, empty drums, batteries, paint cans and other construction materials.

For more than 20 years, Tarkowski's neighbors had harassed him and had complained to environmental officials. The U.S. Environmental Protection Agency (EPA) inspected his property in 1979, but concluded that it did not pose any environmental hazard. In 1995, EPA rated the property zero on its hazard rating scale. Two years later, state authorities took soil and water samples and found no noteworthy contamination.

In 1998, EPA took additional samples of soil and materials on his property, finding only trace amounts of contaminants that, in fact, were comparable to levels found in surrounding properties and did not indicate any release. Nevertheless, EPA filed suit against Tarkowski alleging an "imminent and substantial endangerment to … public health … and the environment" based on an actual or possible release of hazardous substances. EPA sought an order to gain access to the site for investigative and remedial purposes. After hearing the evidence, a federal district court dismissed EPA's suit. An appeals court upheld the ruling, castigating the agency's conduct and judgment. [248 F.3d 596 (7th Cir. 2001)]

Tarkowski petitioned the district court for an award of attorney's fees and expenses under the Equal Access to Justice Act. The law allows certain parties who prevail against the federal government in a lawsuit to recover their litigation expenses unless the government's position was reasonable. Finding EPA's stance totally unjustified, the district judge said, "There was no evidence

of legally significant contamination and … the government's claim of an imminent and substantial endangerment was factually baseless." EPA cannot reasonably insist that "if a hazard was found, no matter how small, it had the right to do whatever it wanted on Tarkowski's property," he added. "It is to protect citizens against … overreaching actions by government bureaucrats that courts are empowered to prevent arbitrary and capricious interference with property rights, said the judge, again citing the appeals court. The government's position … 'would give the agency in effect an unlimited power of warrantless searches and seizures [which the Superfund law] does not contemplate and the Fourth Amendment would almost certainly forbid,'" he concluded with yet another reference to the appellate opinion.

You must also address the remaining issues. There are genuine issues of material fact regarding the necessity of EPA Iron Mountain Mine CERCLA response costs, you must reverse the grant of partial summary judgment, deny any summary judgment, dismiss or set a date for hearing.

The district court has deferred and granted the United States and California's motions on all claims, and refused to hear pro se plaintiffs intervention, exception, exaction, positive law claim, and state-law nuisance and trespass claims asserted by T. W. Arman, John F. Hutchens, and on behalf of Iron Mountain Mines, Inc. and on behalf of a class.

. See Carson Harbor Vill., Ltd. v. Unocal Corp., 990 F. Supp. 1188, 1199 (C.D. Cal. 1997). The court first held that Carson Harbor's CERCLA claim fails because it did not show that its remedial action was "necessary" under 42 U.S.C. § 9607(a)(4)(B) because there was no evidence of an "actual and real threat" to human health or the environment. Id. at 1193-94. In so holding, the district court disregarded certain evidence to the contrary as inadmissible hearsay. See id. at 1193 n.4. In the alternative, with respect to the Partnership Defendants, the district court held that they were not PRPs within the meaning of 42 U.S.C. § 9607(a)(2) because "disposal warranting CERCLA liability requires a showing that hazardous substances were affirmatively introduced into the environment. " Id. At 1195. And, with respect to the storm water runoff, there was no direct evidence that any lead-contaminated storm water entered the property at any time prior to 1983, when Carson Harbor purchased the property. Id.

The intervenor quo warranto RCRA 7003 special deputy private government attorney general.

The district court granted summary judgment on the RCRA claim because the "evidence shows that there was no imminent danger" to human health or the environment--a required element for a RCRA claim. Id. at 1196 (emphasis added). On the CWA claim, the court concluded that there was no evidence that the defendants violated a National Pollutant Discharge Elimination System ("NPDES") permit, as required for a CWA violation. Id. at 1197. With respect to the common law claims for nuisance, trespass, and injury to easement against the Government Defendants, the district court would hold that CAL. CIV. CODE § 3482, which provides that nothing done pursuant to express statutory authorization can be deemed a nuisance, provides a complete defense. Iron Mountain Mines demonstrates that illegitimate animus, malice, and false claims are grounds for piercing the governments' veils**. Attorney and Expert Fees and costs for the defendants.**

YOU SHOULD GRANT DECLARATORY AND INJUNCTIVE RELIEF!

Void and vacate the lien. Enjoin EPA for: Conflicts of interest, fraud upon the courts, joint and several trespassers unlawful detainer damages and ejectment, manifest injustice, errors, prohibition, certiorari, abuse, mandamus, intervention, & arrest of false claims with incidental and peremptory administrative mandamus and quo warranto per se taking requiring just compensation. **"Full relief and restore possession to the party entitled thereto" for absence of jurisdiction.**

WRIT OF EQUITABLE ESTOPPEL! WRIT OF POSSESSION & EJECTMENT!

JUDGEMENT OF THE COURTS ENJOINED, VACATED, AND SET ASIDE

January 27, 2010 Signature:_____

/s/ John F. Hutchens, *grantees' agent;* Warden of the Gales, Forests, & Stannaries expert

Points and authorities previously filed hereby submitted as though fully set forth herein.

Verification affidavit:

I, John F. Hutchens, hereby state that the same is true of my own knowledge, except as to matters which are herein stated on my own information or belief, and as to those matters, I believe them to be true. Affirmed this day: January 27, 2010

Signature:_____

s/ John F. Hutchens; Joint Venturer, Warden of the Gales, Forests, and Stannaries.

CITIZEN & AGENT OF RECORD, EXPERT for: T.W. Arman & Iron Mountain Mines, Inc.