

**R E C E I V E D**  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**DEC 16 2011**

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_ DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

1 John F. Hutchens, *Tenant-in-Chief, Warden, Agent of*  
2 T.W. Arman, *pro se*; Landlord, Iron Mountain Mines, Inc.  
3 President, Chairman, CEO, sole stockholder:  
4 P.O. Box 992867, Redding, CA 96099 530-275-4550

5 Iron Mountain Mines, Inc.; in the custody of the United States  
6 *IMMI Special Commission Chair; Box 182 Canyon, Ca. 94516, 925-878-9167*  
7 *john@ironmountainmine.com*

8 **In The United States Ninth Circuit Court of Appeals**

9 **TWO MINERS & 8000 ACRES OF LAND Appeals #: 09-17411-09-70047-09-71150/ 11-15383**

10 **(IRON MOUNTAIN MINES, INC. et al.) ) CFCDC No. 09-207 L; lien on 00779-TCW**  
11 **T.W. ARMAN and JOHN F. HUTCHENS, ) ORIGINAL MANDAMUS, PRAYERS AND**  
12 **(real parties in interest) Jointly on behalf of ) APPLICATIONS FOR PROHIBITION &**  
13 **all similarly situated under GOD, nominally ) QUO WARRANTO; MANDATE - CITIZEN**  
14 **indivisible with Mr. T.W. Arman, plaintiff, ) SUIT; INSURANCE FRAUD 1033, 1034**  
15 **v. ) WRITS FOR EXTRAORDINARY RELIEF:**  
16 **UNITED STATES, Defendants ) CERTIORARIFIED INTERVENTIONS:**  
17 **THE UNITED STATES OF AMERICA ) WRONGFUL TAKINGS; CROSS CLAIMS;**  
18 **STATE OF CALIFORNIA, EPA, DOJ, NRDC, ) COUNTERCLAIMS; ERRORS OF IMPUN-**  
19 **STATE OF CALIFORNIA, EPA, DOJ, NRDC, ) BATELLE, CH2MHill, ASTRAZENECA,**  
20 **STARR INTERNATIONAL COMPANIES, ) ITY AND MISCARRIAGES OF JUSTICE;**  
21 **INC., AMERICAN INTERNATIONAL ) HOSTIS HUMANI GENERIS, TREASON;**  
22 **GROUP, INC, & NINTH CIRCUIT COURT ) PIRACIES, EXTORTIONS, MONOPOLIES,**  
23 **Actual Defendant's ) COMPLAINT of MANIFEST INJUSTICE ) DESPOTISMS, TYRANNIES; SLAVERY &**  
24 **"NO IMMUNITY UNDER § 1983" ) GRAVE CRIMES ON THE PUBLIC TRUST**  
25 **) VERIFIED CLASS ACTION FAIRNESS ACT**

26 **"These are extraordinary times, and it calls for swift and extraordinary action... Year after**  
27 **year, decade after decade, we've chosen delay over decisive action. Rigid ideology has over-**  
28 **ruled sound science. Special interests have overshadowed common sense."**

29 **President Barrack Obama, --CQ Transcripts Wire Monday, January 26, 2009; 11:06 AM**

1 ATTENTION: THIS MATTER IS ENTITLED TO PRIORITY AND SUBJECT TO  
2 THE EXPEDITED HEARING AND REVIEW PROCEDURES CONTAINED IN  
3 SECTION 1094.8 OF THE CODE OF CIVIL PROCEDURE.

4 **Authorities of Sec. 2326 Perfected Title Law. 1881.**

5 **JUDICIAL DETERMINATION OF RIGHT OF POSSESSION**

6 Sec. 2326 “verified by the oath of any duly authorized agent or attorney in fact. Cognizant of the  
7 facts stated; oath of adverse claim before the clerk of any court of record of the United States”.

8 Pursuant to provisions of the General Mining Law of 1872 and amendments thereto.

9 § 26. Locators’ rights of possession and enjoyment; exclusive right.

10 § 29. Patents; ...the affidavits required made by authorized agent conversant with the facts.

11 § 30. Adverse claims; judicial determination of right of possession;

12 § 31. Oath: agent or attorney in fact, title may be verified by the oath of any duly authorized agent.

13 § 33. Existing rights; all the rights and privileges conferred.

14 § 40. Verification of affidavits before officer authorized to administer oaths within land district

15 § 51. Vested and accrued rights; by priority of possession, rights vested and accrued,

16 ...the possessors and owners of such vested rights shall be maintained and protected in the same;

17 **LOCATORS RIGHTS OF POSSESSION AND ENJOYMENT;**

18 **§ 1988. Proceedings in vindication of civil rights:** Comes now Petitioners as plaintiffs,  
19 individually and in the official capacity of the Warden of the Arboretum, Gales, and Stannaries of  
20 Iron Mountain Mines, Inc. the “Vice Warden's Miner's Court” on behalf of Mr. T.W. Arman; sole  
21 shareholder, Chairman, and Chief Executive Officer of Iron Mountain Mines, Inc., known as the  
22 Hu/Mountain joint venturers, and also in the capacity of agent for and on behalf of Essential Solu-  
23 tions, Inc. and Artesian Mineral Development & Consolidated Sludge, Inc., all mining companies,  
24 and files this, our Petitions for Citizens Suits, Writs of Mandamus, Prohibition, quo Warranto, and  
25 Coram Nobis Tenenda Breve Soke Declaratory and Exemplary Injunctive Relief, and show:

26 **AUTHORITIES OF THE VICE WARDEN OF ARBORETUMS, GALES & STANNARIES**

27 **Adverse Claims ...to their and their heirs and assigns use and behoof, forever.**

28 Morrill Agricultural College Patent: 360 acres of land, May 1<sup>st</sup>, 1862, President Abraham Lincoln.

1 United States of America State of California Patent: January 4<sup>th</sup>, 1875, Governor Newton Booth.

2 **CAUSE OF ACTION: EJECTMENT, POSSESSION, QUIET TITLE, REMAINDER**

3 The Vice Warden of Arboretums, Gales and Stannaries is vested with the duty, responsibility and  
4 authority to exercise and administer the safety & protection of Iron Mountain Mines, Inc. property,  
5 its preservation and perfection, in particular the prosecution of trespassers, nuisances, and the like.

6 The Vice Warden is mandated to bring all suits related to the Iron Mountain Mines EPA controlled  
7 Superfund site as agent on behalf of Iron Mountain Mines, Inc. and Mr. T.W. Arman, landlord.

8 The Vice Warden is vested with the responsibility, duty, and authority to administer the office of  
9 Project Manager for the implementation of the actual remedy for the Acid Mine Drainage and any  
10 other pollution control measures at Iron Mountain Mines, Inc. and the IMM Superfund site.

11 The Vice Warden, acting under the direction and control of the T.W. Arman, who is sole owner of  
12 Iron Mountain Mines, Inc., and subject to the approval of T.W. Arman, is vested with the authority  
13 and responsibility to affect settlement agreements for recovery of trust funds and other monies, and  
14 to execute the release of any and all claims held or potentially held for recovery of Superfund or  
15 private funds expended by or through the EPA at Iron Mountain Mines, Inc. properties.

16 The interests of T.W. Arman, Iron Mountain Mines, Inc, the United States of America State of  
17 California, and the citizens thereof are best served by the Vice Warden assuming responsibility and  
18 control of the remedial actions at the Iron Mountain Mines, Inc. EPA administered Superfund site,  
19 but this solution has not been accepted by the EPA, and the EPA's employees continues to serve in  
20 the capacity of Project Manager for the site, and the EPA has refused to consider or respond to the  
21 claim asserted by the Warden of the right to intervene and the right to assume the appointment  
22 granted by the rightful owner of the property Mr. T.W. Arman and his Iron Mountain Mines, Inc.

23 The Vice Warden and the EPA and DOJ have conflicting interests and intentions relating to the  
24 administration of the Superfund site, and the proper authority for such administration is allocated to  
25 the Warden -- the private official that is vested and charged with the executive powers of Iron  
26 Mountain Mines, Inc., particularly the administration of the remedial actions and the cleanup --  
27 rather than in the EPA project manager, the public official of a subaltern executive nature that is  
28 given general powers as the officer for a federal agency, a position rightfully prescribed to be trans-

1 referred to private control by the consent decree, and the most qualified and only party in contract to  
2 initiate proper institutional controls required by law, but whose power has been denied by the EPA.

3 **THE EPA'S ACTIONS TAKEN IN VIOLATION OF THE CONSTITUTION AND LAWS**  
4 **OF THE UNITED STATES, AND THE CONSTITUTION, LAWS, AND CODES OF CALI-**  
5 **FORNIA, ARE OUTSIDE OF THE POWERS AND AUTHORITY VESTED IN THE EPA**  
6 **AND DOJ AND NRDC BY THE PEOPLE OF THE UNITED STATES OF AMERICA.**

7 All public officials for the Iron Mountain Mines, Inc. Superfund site, including the Attorney Gen-  
8 erals, are subject to the Constitution and Laws of the United States and California.

9 The powers and authority of all public officials, including the Attorney Generals, are limited to  
10 that power and authority specifically granted by the people via the Constitution and Laws of the  
11 United States and California.

12 The Attorney Generals are subaltern executive public officers of the United States and California,  
13 with general powers as the legal counsel, officer, and advisor for the United States and California  
14 and the departments, agencies, and divisions thereof.

15 As such legal counsel, the Attorney Generals are required to act in compliance with the Constitu-  
16 tion of the United States, the Laws of the United States, and the laws and rules proscribing the legal  
17 and ethical duties and responsibilities of all attorneys and officers of Court authorized to serve as  
18 legal counsel and/or otherwise to provide legal representation in the United States.

19 Any and all actions of the Attorney Generals that are taken outside of the parameters of power and  
20 authority granted the Attorney Generals by the people of the United States and California, as ex-  
21 pressed and specified by the Constitution and Laws of the United States and of California are void,  
22 invalid, and of no effect.

23 **CALIFORNIA CONSTITUTION ARTICLE 1, DECLARATION OF RIGHTS**

24 SECTION 1. All people are by nature free and independent and have inalienable rights. Among  
25 these are enjoying and defending life and liberty, acquiring, possessing, and protecting property,  
26 and pursuing and obtaining safety, happiness, and privacy.

27 SEC. 3. (a) The people have the right to instruct their representatives, petition government for re-  
28 dress of grievances, and assemble freely to consult for the common good.

1 (b) (1) The people have the right of access to information concerning the conduct of the people's  
2 business, and, therefore, the meetings of public bodies and the writings of public officials and agen-  
3 cies shall be open to public scrutiny.

4 (2) A statute, court rule, or other authority, including those in effect on the effective date of this  
5 subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly con-  
6 strued if it limits the right of access. A statute, court rule, or other authority adopted after the ef-  
7 fective date of this subdivision that limits the right of access shall be adopted with findings demon-  
8 strating the interest protected by the limitation and the need for protecting that interest.

9 (3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section  
10 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects  
11 that right to privacy, including any statutory procedures governing discovery or disclosure of in-  
12 formation concerning the official performance or professional qualifications of a peace officer.

13 (4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, includ-  
14 ing the guarantees that a person may not be deprived of life, liberty, or property without due pro-  
15 cess of law, or denied equal protection of the laws, as provided in Section 7.

16 SEC. 4. Free exercise or enjoyment of religion without discrimination or preference is guaranteed.  
17 The liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or  
18 safety of the State. The legislature shall make no law respecting an establishment of religion.

19 A person is competent to be a witness or juror regardless of their opinions on religious beliefs.

20 SEC. 6. Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.

21 SEC. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or  
22 denied equal protection of the laws;

23 SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not  
24 be passed.

25 SEC. 13. The right of the people to be secure in their persons, houses, papers, and effects against  
26 unreasonable seizures and searches may not be violated; and a warrant may not issue except on  
27 probable cause, supported by oath or affirmation, particularly describing the place to be searched  
28 and the persons and things to be seized.

1 SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attend-  
2 ance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's de-  
3 fense, to be personally present with counsel, and to be confronted with the witnesses against the de-  
4 fendant. The Legislature may provide for the deposition of a witness in the presence of the defend-  
5 ant and the defendant's counsel. Persons may not twice be put in jeopardy for the same offense, be  
6 compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or  
7 property without due process of law.

8 SEC. 19. (a) Private property may be taken or damaged for a public use and only when just com-  
9 pensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.  
10 The Legislature may provide for possession by the condemnor following commencement of emin-  
11 ent domain proceedings upon deposit in court and prompt release to the owner of money determ-  
12 ined by the court to be the probable amount of just compensation.

13 (b) The State and local governments are prohibited from acquiring by eminent domain an own-  
14 er-occupied residence for the purpose of conveying it to a private person.

15 (c) Subdivision (b) of this section does not apply when State or local government exercises the  
16 power of eminent domain for the purpose of protecting public health and safety; preventing serious,  
17 repeated criminal activity; responding to an emergency; or remedying environmental contamination  
18 that poses a threat to public health and safety.

19 (d) Subdivision (b) of this section does not apply when State or local government exercises the  
20 power of eminent domain for the purpose of acquiring private property for a public work or im-  
21 provement.

22 (e) For the purpose of this section:

23 1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise, or other-  
24 wise.

25 2. "Local government" means any city, including a charter city,  
26 county, city and county, school district, special district, authority, regional entity, redevelopment  
27 agency, or any other political subdivision within the State.

1 3. "Owner-occupied residence" means real property that is improved with a single-family resid-  
2 ence such as a detached home, condominium, or townhouse and that is the owner or owners' prin-  
3 cipal place of residence for at least one year prior to the State or local government's initial written  
4 offer to purchase the property.

5 Owner-occupied residence also includes a residential dwelling unit attached to or detached from  
6 such a single-family residence which provides complete independent living facilities for one or  
7 more persons. 4. "Person" means any individual or association, or any business entity, including,  
8 but not limited to, a partnership, corporation, or limited liability company.

9 5. "Public work or improvement" means facilities or infrastructure for the delivery of public ser-  
10 vices such as education, police, fire protection, parks, recreation, emergency medical, public health,  
11 libraries, flood protection, streets or highways, public transit, railroad, airports and seaports; utility,  
12 common carrier or other similar projects such as energy-related, communication-related, water-re-  
13 lated and wastewater-related facilities or infrastructure; projects identified by a State or local gov-  
14 ernment for recovery from natural disasters; and private uses incidental to, or necessary for, the  
15 public work or improvement.

16 6. "State" means the State of California and any of its agencies or departments.

17 SEC. 24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the  
18 United States Constitution.

19 In criminal cases the rights of a defendant to equal protection of the laws, to due process of law,  
20 to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to  
21 compel the attendance of witnesses, to confront the witnesses against him or her, to be free from  
22 unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself  
23 or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition  
24 of cruel or unusual punishment, shall be construed by the courts of this State in a manner consistent  
25 with the Constitution of the United States. This Constitution shall not be construed by the courts to  
26 afford greater rights to criminal defendants than those afforded by the Constitution of the United  
27 States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on crimin-  
28 al causes than those afforded by the Constitution of the United States.

1 This declaration of rights may not be construed to impair or deny others retained by the people.  
2 SEC. 26. The provisions of this Constitution are mandatory and prohibitory, unless by express  
3 words they are declared to be otherwise.

4 SEC. 29. In a criminal case, the people of the State of California have the right to due process of  
5 law and to a speedy and public trial.

6 **“WHEN ALL GOVERNMENT, DOMESTIC AND FOREIGN, IN LITTLE AS IN GREAT**  
7 **THINGS, SHALL BE DRAWN TO WASHINGTON AS THE CENTER OF POWER, IT**  
8 **WILL RENDER POWERLESS THE CHECKS PROVIDED OF ONE GOVERNMENT ON**  
9 **ANOTHER AND WILL BECOME AS VENAL AND OPPRESSIVE AS THE GOVERN-**  
10 **MENT FROM WHICH WE SEPARATED.” – Thomas Jefferson**

11 **T.W. ARMAN IS WITHOUT ADEQUATE REMEDY AT LAW, AND SEEKS THE AU-**  
12 **THORITY OF THIS COURT TO REQUIRE THE EPA AND DOJ TO COMPLY WITH**  
13 **THE CONSTITUTION AND LAWS OF THE UNITED STATES AND CALIFORNIA, AND**  
14 **TO RESPECT THE RIGHTS OF T.W. ARMAN AND IRON MOUNTAIN MINES, INC.**  
15 **When in the Course of human events, it becomes necessary for one people to dissolve the**  
16 **political bands which have connected them with another, and to assume among the powers of**  
17 **the earth, the separate and equal station to which the Laws of Nature and of Nature's God**  
18 **entitle them, a decent respect to the opinions of mankind requires that they should declare**  
19 **the causes which impel them to the separation.**

20 **You have obstructed the Administration of Justice, by refusing your Assent to the constitu-**  
21 **tional limitations of Federal Judiciary Powers.**

22 **This matter is within the original jurisdiction of the Supreme Court, and is currently before**  
23 **this Court under false claims pursuant to TITLE 42--THE PUBLIC HEALTH AND WEL-**  
24 **FARE, CHAPTER 103--COMPREHENSIVE ENVIRONMENTAL RESPONSE, COM-**  
25 **PENSATION, AND LIABILITY, SUBCHAPTER III--MISCELLANEOUS PROVISIONS**

26 **Sec. 9659. Citizens suits, (a) Authority to bring civil actions**

27 **Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this**  
28 **title (relating to timing of judicial review), any person may commence a civil action on his**  
**own behalf--**

1 (1) against any person (including the United States and any other governmental instrumental-  
2 ity or agency, to the extent permitted by the eleventh amendment to the Constitution) who is al-  
3 leged to be in violation of any standard, regulation, condition, requirement, or order which has be-  
4 come effective pursuant to this chapter (including any provision of an agreement under section  
5 9620 of this title, relating to Federal facilities); or

6 (2) against the President or any other officer of the United States (including the Administrator  
7 of the Environmental Protection Agency and the Administrator of the ATSDR) where there is al-  
8 leged a failure of the President or of such other officer to perform any act or duty under this  
9 chapter, including an act or duty under section 9620 of this title (relating to Federal facilities),  
10 which is not discretionary with the President or such other officer.

11 Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title  
12 (relating to research, development, and demonstration).

13 (b) Venue

14 (1) Actions under subsection (a)(1) Any action under subsection (a)(1) of this section  
15 shall be brought in the district court for the district in which the alleged violation occurred.

16 (2) Actions under subsection (a)(2) Any action brought under subsection (a)(2) of this  
17 section may be brought in the United States District Court for the District of Columbia.

18 (c) Relief

19 The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section  
20 to enforce the standard, regulation, condition, requirement, or order concerned (including any pro-  
21 vision of an agreement under section 9620 of this title), to order such action as may be necessary to  
22 correct the violation, and to impose any civil penalty provided for the violation. The district court  
23 shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the Presid-  
24 ent or other officer to perform the act or duty concerned.

25 The case and controversy and legal issues present in this cause necessarily involve interpretation  
26 of Constitutional and statutory provisions in a context without precedence, and involve issues of  
27 such fundamental public importance that the Court should hasten the matters at issue.

1 The interests of judicial and governmental efficacy and conformity of federal action with the Con-  
2 stitution and Laws of the United States and California are best promoted by the exercise of original  
3 jurisdiction over this case by this Court, as specifically granted by Section 9659.

4 In order to avoid continuing violation and disregard for the Constitution and Laws of the United  
5 States and the State of California by the EPA and the DOJ, and in order to facilitate the execution  
6 of the President's duty to supervise the official conduct of all executive officers and require compli-  
7 ance and faithful execution of the Constitution and Laws of the United States and the State of Cali-  
8 fornia by such public officials, including the EPA and DOJ, and to avoid prejudicial delay and con-  
9 tinuing action outside of the authority of United States and California law by the EPA and DOJ, the  
10 Warden submits the present case and controversy to this Court pursuant to the original jurisdiction  
11 of this Court as granted by the people through the Constitution and Laws of the United States.

12 **GRAVE CRIMES AND INJURIES TO THE PEOPLE & CONSTITUTION, LAW OF THE**  
13 **UNITED STATES OF AMERICA STATE OF CALIFORNIA, AND TO MR. T.W. ARMAN,**  
14 **TRUE AND RIGHTFUL OWNER OF IRON MOUNTAIN MINES, INC., LANDLORD.**

- 15 a. Abuse of power of federal office;  
16 b. Invalid and void federal action;  
17 c. Interference with the lawful and efficient administration of Iron Mountain Mines, Inc.  
18 d. Interference with the lawful and efficient administration of the Hu/Mountain joint venture;  
19 e. Erosion of the trust and respect of the citizens in the governmental institutions of the EPA, the  
20 supremacy of law in and relating to the United States and the State of California, and the necessary  
21 subordination of federal officials to the will of the people as validly expressed in the Laws of the  
22 United States and the State of California;  
23 f. Adverse effects upon Iron Mountain Mines, Inc. businesses;  
24 g. Adverse effects upon the health and the environment of Shasta County and California.

25 The Vice Warden is without adequate remedy at law, and necessarily invokes both the legal and  
26 equitable jurisdiction of this Court to remedy the injuries and wrongs as set out herein-above, and  
27 such other injuries and wrongs as may be determined by this Court to be necessarily related to this  
28 case and controversy.

1 The will of the people of California, and the general and specific provisions and intentions of the  
2 Constitution and Laws of the United States and the State of California and the federal laws and reg-  
3 ulations relating to administration of the EPA, are only complied with by a cessation of actions on  
4 the part of the EPA that are taken without legal authority and against the expressed interests and in-  
5 structions of the Petitioners.

6 Wherefore, premises considered, Petitioner prays that this Court exercise its jurisdiction over this  
7 case and controversy, consider this Petition for Writs of Mandamus, Prohibition quo Warranto, and  
8 for Declaratory Judgment and Injunctive Relief, and set a schedule for the filing of the EPA & DOJ  
9 Answer/Response to the briefs for this action.

10 Furthermore, Petitioner prays that this Court, upon consideration of this case and controversy upon  
11 the legal merits, issue a Declaratory Judgment to the effect that:

12 The Vice Warden is the Actual Project Manager of the Iron Mountain Mines, Inc. superfund site;  
13 The EPA is subject to the Constitution and Laws of the United States and the State of California,  
14 and has no valid legal authority to take actions that are contrary to and outside of the parameters of  
15 the powers of agency as vested by the people through validly enacted law.

16 Although the issuance of a writ of mandamus “is an extraordinary remedy reserved for extraordin-  
17 ary circumstances[,] [a]n administrative agency’s unreasonable delay presents such a circumstance  
18 because it signals the ‘breakdown of regulatory processes.’” *In re American Rivers*, 372 F.3d 413,  
19 418 (D.C. Cir. 2004) (citations omitted)

20 And furthermore, Petitioner prays that this Court issue a Writ of Mandamus and Prohibition re-  
21 quiring the EPA - DOJ – California strike the liens against Mr. T. W. Arman's property;  
22 To erase and desist from actions for recovery of unrecoverable past response costs.

23 To grant Mr. T.W. Arman and Iron Mountain Mines, Inc. the innocent landowner defense of 9604.

24 And furthermore, Petitioner prays for any and all such Orders and Writs of this Court as may be ne-  
25 cessary and appropriate to effect such and to otherwise further the interests of the constitutions, in-  
26 terests of law, of the people and the United States and the people of the State of California, and of  
27 T.W. Arman and Iron Mountain Mines, Inc. Essential Solutions Inc. Hu/Mountain JV -AMD&CSI,  
28 of the Special Deputy Vice Warden; and on behalf of a class, as deemed appropriate by this Court.

1 “But these are things that cannot be explained in few words, nor are we furnished with that suffi-  
2 ciency of experiments which is required to an accurate determination and demonstration of the laws  
3 by which this electric and elastic Spirit operates.” General Scholium (Sir Isaac Newton)

4 Reductio ad absurdum (Latin: "reduction to the absurd") is a form of argument in which a proposi-  
5 tion is disproven by following its implications to a logical but absurd consequence.

6 An example of a reductio ad absurdum would be to note the consequences of an ad coelum theory  
7 of property would be that a land owner would have ownership over other planets.

8 Attempts at making a reductio ad absurdum argument can easily create a straw man fallacy if it dis-  
9 torts the proposition which one is trying to disprove. The example above can very easily lead to a  
10 straw man fallacy in that it states that a person cannot own land because no one person has the right  
11 to own a planet if other people require the land. The fallacy, thus, lies in the difference between the  
12 ability to own land and the right to own land, which are not equivalent. *Wikipedia*

13 On April 23, 2002, the Supreme Court ruled, six to three, that there was no categorical taking res-  
14 ulting from the imposition of two moratoria on development totaling thirty-two months to facilitate  
15 formulation of a comprehensive land plan for the Lake Tahoe Basin. Justice Stevens’ opinion for  
16 the six-member majority adopted Justice O’Connor’s reluctance, as evident in her Palazzolo con-  
17 currence, to extend categorical rules in takings cases. In ruling that the case was best analyzed un-  
18 der the multi-factor Penn Central framework, the Court consigned Justice Scalia’s Lucas categoric-  
19 al rule to the “extraordinary case in which a regulation permanently deprives property of all  
20 value . . . .” The Court reiterated that even a decline in value of ninety-five percent would require  
21 analysis under Penn Central.

22 The Court not only sided with Justice O’Connor’s aversion to deciding takings cases according to  
23 absolute rules and severely limited Justice Scalia’s Lucas rule, it also expressly adopted Justice  
24 Brennan’s large view of the relevant parcel, quoting from his Penn Central opinion, This seems to  
25 indicate that the Court will not ratify “conceptually severing” property into discrete segments for  
26 takings purposes, despite Justice Kennedy’s ambivalence on this issue in Palazzolo. Tahoe-Sierra  
27 Pres. Council, Inc. v. Tahoe Reg’l Planning Agency thus confirms the assertion that the future of  
28 the takings doctrine lies in Justice Brennan multi-factor balancing, not Justice Scalia absolutism.

1 **§ 1651. Writs**

2 (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary  
3 or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of  
4 law.

5 (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has  
6 jurisdiction.

7 **ENFORCEMENT AUTHORITY**

8 **PART 300--NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTIN-**  
9 **GENCY PLAN--Table of Contents**

10 Subpart B--Responsibility and Organization for Response

11 Sec. 300.180 State and local participation in response.

12 (a) Each state governor is requested to designate one state office/ representative to represent the  
13 state on the appropriate RRT. The state's office/representative may participate fully in all activities  
14 of the appropriate RRT. Each state governor is also requested to designate a lead state agency that  
15 will direct state-lead response operations.

16 This agency is responsible for designating the lead state response official for federal and/or state-  
17 lead response actions, and coordinating/ communicating with any other state agencies, as appropri-  
18 ate. Local governments are invited to participate in activities on the appropriate RRT as may be  
19 provided by state law or arranged by the state's representative. Indian tribes wishing to participate  
20 should assign one person or office to represent the tribal government on the appropriate RRT.

21 (b) Appropriate local and state officials (including Indian tribes) will participate as part of the re-  
22 sponse structure as provided in the ACP.

23 (c) In addition to meeting the requirements for local emergency plans under SARA section 303,  
24 state and local government agencies are encouraged to include contingency planning for responses,  
25 consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

26 (d) For facilities not addressed under CERCLA or the CWA, states are encouraged to undertake  
27 response actions themselves or to use their authorities to compel potentially responsible parties to  
28 undertake response actions.

1 (e) States are encouraged to enter into cooperative agreements pursuant to sections 104 (c)(3)  
2 and (d) of CERCLA

3 "Each remedial action shall utilize permanent solutions and alternative treatment technologies or  
4 resource recovery technologies to the maximum extent practicable. (NCP §300.430(f)(5)(ii))  
5 Petitioner demands that the EPA comply with the General Mining Law and Landlords property  
6 rights in recognition of the Title by Patent Deeds, provisions of the National Contingency Plan  
7 (NCP) the Clean Water Act (CWA), the Solid Waste Act (RCRA), the Comprehensive Environ-  
8 mental Response, Compensation, and Liability Act (CERCLA, or SUPERFUND), NEPA, the  
9 Emergency Planning and Community Right to Know Act (EPCRA), the California Water Code, the  
10 California Health and Safety Code. and the California Toxic Pits Act.

11 **Excerpt from SFGate, part of the San Francisco Chronicle, June 12, 2009**

12 Rick Sugarek knows not to splash through the puddles inside "the mouth of the beast."  
13 That is what he calls the gaping wound near Redding known to everybody else as the Iron Moun-  
14 tain Mine, which is widely regarded by scientists as one of the most polluted places in the world.  
15 The project manager for the Environmental Protection Agency said he once dropped a pen in some  
16 running water inside the mine and when he recovered it, it was coated in copper. The water is so  
17 acidic that droplets eat holes in blue jeans and dissolve the stitching on boots, much like battery  
18 acid. Sugarek stood Thursday in a shaft once known as the Richmond Mine. It is the source of the  
19 toxic stew that has polluted the Sacramento River and its tributaries for more than a century, killed  
20 thousands of fish and turned a once-majestic mountain into a hellish breeding ground for nasty bac-  
21 terial slime that helps create what geologists say is the "world's worst water."

22 **SUPPORTING DECLARATIONS**

23 How will we manage to get environmentalism out of the clutches of religion, and back to a scientifi-  
24 ic discipline? There's a simple answer: we must institute far more stringent requirements for what  
25 constitutes knowledge in the environmental realm. I am thoroughly sick of politicized so-called  
26 facts that simply aren't true. It isn't that these "facts" are exaggerations of an underlying truth. Nor  
27 is it that certain organizations are spinning their case to present it in the strongest way. Not at all---  
28 what more and more groups are doing is putting out is lies, pure and simple. Falsehoods that they

1 know to be false...At this moment, the EPA is hopelessly politicized. In the wake of Carol Brown-  
2 er, it is probably better to shut it down and start over. What we need is a new organization much  
3 closer to the FDA. We need an organization that will be ruthless about acquiring verifiable results,  
4 that will fund identical research projects to more than one group, and that will make everybody in  
5 this field get honest fast... So it's time to abandon the religion of environmentalism, and return to  
6 the science of environmentalism, and base our public policy decisions firmly on that.

7 With so many past failures, you might think that environmental predictions would become more  
8 cautious. But not if it's a religion. Remember, the nut on the sidewalk carrying the placard that pre-  
9 dicts the end of the world doesn't quit when the world doesn't end on the day he expects. He just  
10 changes his placard, sets a new doomsday date, and goes back to walking the streets. One of the de-  
11 fining features of religion is that your beliefs are not troubled by facts, because they have nothing  
12 to do with facts.

13 ...I can cite the appropriate journal articles not in whacko magazines, but in the most prestigious  
14 science journals, such as Science and Nature. But such references probably won't impact more than  
15 a handful of you, because the beliefs of a religion are not dependant on facts, but rather are matters  
16 of faith. Unshakeable belief.

17 I want to argue that it is now time for us to make a major shift in our thinking about the environ-  
18 ment, similar to the shift that occurred around the first Earth Day in 1970, when this awareness was  
19 first heightened. But this time around, we need to get environmentalism out of the sphere of reli-  
20 gion. We need to stop the mythic fantasies, and we need to stop the doomsday predictions. We

21 need to start doing hard science instead. By Michael Crichton, San Francisco September 15, 2003

22 JUDICIAL SWADDLING AND DEFERENCE ARE AN UNCONSTITUTIONAL VIOLATION  
23 AND ABUSE OF PROTECTIONS OF THE 1<sup>ST</sup> AMENDMENT ESTABLISHMENT CLAUSE.

24 “There can be no doubt that this sort of noneconomic injury is one of the most serious con-  
25 sequences of discriminatory government action and is sufficient in some circumstances to support  
26 standing.” 468 U.S. 737, 755, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984).

27 See also Community Hosp. of Monterey Peninsula v. Thompson, 323 F.3d 782, 792 (9th Cir.

28 2003) (“considerable less deference” is owed to agency’s interpretation that conflicts with prior

1 interpretation); *Santamaria-Ames v. INS*, 104 F.3d 1127, 1132 n.7 (9th Cir. 1996) (no deference  
2 owed to interpretation that is contrary to plain and sensible meaning of regulation); *United States v.*  
3 *Trident Seafoods, Inc.*, 60 F.3d 556, 559 (9th Cir. 1995) (no deference owed to interpretation  
4 offered by counsel where the agency has not established a position).

5 See also *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1162 (9th Cir.) (describing twostep  
6 Chevron review, and noting when Congress leaves a statutory gap for the agency to fill, any  
7 administrative regulations must be upheld unless they are arbitrary, capricious, or manifestly con-  
8 trary to the statute), amended by 197 F.3d 1035 (9th Cir. 1999).

9 See also *American Fed. of Government Employees v. FLRA*, 204 F.3d 1272, 1275 (2000)  
10 (noting agency's interpretation of a statute outside of its administration is reviewed *de novo*).

11 See also *Resources Invs., Inc. v. U.S. Army Corps of Eng'rs*, 151 F.3d 1162, 1165 (9th Cir.  
12 1998) (deference does not extend to agency litigating positions that are wholly unsupported by  
13 regulations, rulings, or administrative practice).

14 The Supreme Court held, in *Ex Parte Milligan* 71 U.S. 2: No doctrine, involving more pernicious  
15 consequences, was ever invented by the wit of man than that any of its provisions can be  
16 suspended during any of the great exigencies of government.”

17 The Solid Waste Disposal Act also provides at 6921(b)(3)(A)(ii), “suit may be brought  
18 against the EPA for failure to perform a non-discretionary act or duty under RCRA. 42 U.S.C. §  
19 6972(a)(2).” CERCLA also provides for citizen suits for failures to perform, such as when:

20 “Each remedial action shall utilize permanent solutions and alternative treatment technologies or  
21 resource recovery technologies to the maximum extent practicable. (NCP §300.430(f)(5)(ii))

22 Petitioner demands that the EPA comply with the General Mining Law and Landowners  
23 property rights in recognition of the Title by Patent Deeds, provisions of the National Contingency  
24 Plan (NCP) the Clean Water Act (CWA), the Solid Waste Act (RCRA), the Comprehensive Envir-  
25 onmental Response, Compensation, and Liability Act (CERCLA, or SUPERFUND),  
26 the Emergency Planning and Community Right to Know Act (EPCRA), the California Water  
27 Code, the California Health and Safety Code. and the California Toxic Pits Act, the same provi-  
28 sions as were required of Iron Mountain Mines and as were used to justify the invasion and occupa-

1 tion of Iron Mountain Mine by the EPA, used to justify the inverse condemnation of Iron Mountain  
2 Mines by the EPA, used to justify the Taking without Just Compensation of Iron Mountain Mines,  
3 Inc. property by the EPA, used to justify the stigmatic injury and desecration of Iron Mountain  
4 Mines by the EPA, used to justify the negligently arbitrary and capricious conduct of the Iron  
5 Mountain Mines Superfund site by the EPA, used to justify the deprivations of the rights to Due  
6 Process and Equal Protection of T.W. Arman and Iron Mountain Mines, Inc. by the EPA, and used  
7 to justify the Personal Injury and Property Damage of T.W. Arman and Iron Mountain Mines, Inc.  
8 by the abuse of discretion of the Court as it was manipulated by the EPA.

9 Once liability is established, the defendant may avoid joint and several liability by establishing  
10 that it caused only a divisible portion of the harm—for example, it contributed only a specific  
11 part of the hazardous substances that spilled. Even if a defendant cannot do so, it may seek contri-  
12 bution from other PRPs under 42 U.S.C. § 9613(f)(1). See Pinal Creek Group, 118 F.3d at 1300  
13 (noting that Congress’s amendment of CERCLA to include § 9613(f)(1) “clarify[ies ] and  
14 confirm[ s]” that contribution is available to PRPs). “A PRP’s contribution liability will correspond  
15 to that party’s equitable share of the total liability and will not be joint and several. “ Id. at 1301.  
16 “It has been justly thought a matter of importance to determine from what source the United  
17 States derives its authority... The question here proposed is whether our bond of union is a compact  
18 entered into by the states, or whether the Constitution is an organic law established by the People.  
19 To this we answer: ‘We the People... ordain and establish this Constitution’...

20 1 Absolute Order for an apology to T.W. Arman for the negligent denial of the innocent landowner  
21 defenses, act of GOD defenses, and Third Party Defenses of CERCLA 9601 -9659 et seq.

22 2 **Therefore, to “establish certain limits not to be transcended by the government.”**

23 **Because this case involves an agency’s construction of a statute it administers, the Court’s**  
24 **analysis is governed by *Chevron U.S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467**  
25 **U.S. 837 “*Chevron* deference is premised on the theory that a statute’s ambiguity constitutes**  
26 **an implicit delegation from Congress to the agency to fill in the statutory gaps. See 467 U.S.,**  
27 **at 844. In extraordinary cases, however, there may be reason to hesitate before concluding**  
28 **that Congress has intended such an implicit delegation. This is hardly an ordinary case.”...**

1 **Given [mining's] unique political history, as well as the breadth of the authority that the**  
2 **[EPA] has asserted, the Court is obliged to defer not to the agency's expansive construction of**  
3 **the statute, but to the people's consistent judgment to deny the [EPA] this power....**

4 **FEDERAL QUESTIONS? EDUCATION & OUTREACH**

5 3 Dogma is the established belief or doctrine held by a religion, ideology or any kind of organiza-  
6 tion: it is authoritative and not to be disputed, doubted or diverged from. The term derives from  
7 Greek δόγμα "that which seems to one, opinion or belief" and that from δοκέω (dokeo), "to think,  
8 to suppose, to imagine". The plural is either dogmas or dogmata , from Greek δόγματα.

9 At the core of the dogma concept is absolutism, infallibility, irrefutability, unquestioned acceptance  
10 (among adherents) and anti-skepticism. These concepts typically invoke criticism from moderate  
11 and modulated conceptual approaches, and thus "dogma" is often colloquially used to indicate a  
12 doctrine which has the problem of claiming absolute truth, when other concepts may be superior.

13 *Wikipedia*

14 4 Petitioners submit that the doctrine of "environmentalism" is in fact a government sponsored re-  
15 ligious in violation of the constitution of the United States.

16 So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a par-  
17 ticular case, so that the Court must either decide that case conformably to the law, disregarding the  
18 Constitution, or conformably to the Constitution, disregarding the law, the Court must determine  
19 which of these conflicting rules governs the case. This is of the very essence of judicial duty.

20 **5 The Courts are to regard the Constitution superior to any ordinary act of the Legislature,**  
21 **the Constitution, and not such ordinary act, must govern the case to which they both apply.**

22 **6 Those who controvert the principle that the Constitution is to be considered in court as a**  
23 **paramount law close their eyes on the Constitution, and see only the law.**

24 **7 This doctrine would subvert the very foundation of all written Constitutions.** It would de-  
25 clare that an act which, according to the principles and theory of our government, is entirely void,  
26 is yet, in practice, completely obligatory. It would declare that, if the Legislature shall do what is  
27 expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It  
28 would be giving to the Legislature a practical and real omnipotence with the same breath which

1 professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that  
2 those limits may be passed at pleasure.

3 8 That it thus reduces to nothing what we have deemed the greatest improvement on political insti-  
4 tutions -- a written Constitution, would of itself be sufficient, in America where written Constitu-  
5 tions have been viewed with so much reverence, for rejecting the construction. But the peculiar ex-  
6 pressions of the Constitution of the United States furnish additional arguments in favour of its re-  
7 jection.

8 9 The judicial power of the United States is extended to all cases arising under the Constitution.

9 10 Could it be the intention of those who gave this power to say that, in using it, the Constitution  
10 should not be looked into? That a case arising under the Constitution should be decided without ex-  
11 amining the instrument under which it arises?

12 This is too extravagant to be maintained.

13 11 In some cases then, the Constitution must be looked into by the judges. And if they can open it  
14 at all, what part of it are they forbidden to read or to obey?

15 12 There are many other parts of the Constitution which serve to illustrate this subject.

16 It is declared that "no tax or duty shall be laid on articles exported from any State." Suppose a duty  
17 on the export of cotton, of tobacco, or of flour, and a suit instituted to recover it. Ought judgment to  
18 be rendered in such a case? ought the judges to close their eyes on the Constitution, and only see  
19 the law?

20 13 **The Constitution declares that "no bill of attainder or ex post facto law shall be passed."**

21 14 If, however, such a bill should be passed and a person should be prosecuted under it, must the  
22 Court condemn to death those victims whom the Constitution endeavours to preserve?

23 15 "No person," says the Constitution, "shall be convicted of treason unless on the testimony of two  
24 witnesses to the same overt act, or on confession in open court."

25 16 Here. the language of the Constitution is addressed especially to the Courts. It prescribes, dir-  
26 ectly for them, a rule of evidence not to be departed from. If the Legislature should change that  
27 rule, and declare one witness, or a confession out of court, sufficient for conviction, must the con-  
28 stitutional principle yield to the legislative act?

1 **17 From these and many other selections which might be made, it is apparent that the**  
2 **framers of the Constitution contemplated that instrument as a rule for the government of**  
3 **courts, as well as of the Legislature.**

4 18 Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies  
5 in an especial manner to their conduct in their official character. How immoral to impose it on them  
6 if they were to be used as the instruments, and the knowing instruments, for violating what they  
7 swear to support!

8 19 The oath of office, too, imposed by the Legislature, is completely demonstrative of the legislat-  
9 ive opinion on this subject. It is in these words:

10 **20 "I do solemnly swear that I will administer justice without respect to persons, and do**  
11 **equal right to the poor and to the rich; and that I will faithfully and impartially discharge all**  
12 **the duties incumbent on me as according to the best of my abilities and understanding, agree-**  
13 **ably to the Constitution and laws of the United States."**

14 21 Why does a judge swear to discharge his duties agreeably to the Constitution of the United  
15 States if that Constitution forms no rule for his government? if it is closed upon him and cannot be  
16 inspected by him? If such be the real state of things, this is worse than solemn mockery. To pre-  
17 scribe or to take this oath becomes equally a crime.

18 22 It is also not entirely unworthy of observation that, in declaring what shall be the supreme law  
19 of the land, the Constitution itself is first mentioned, and not the laws of the United States gener-  
20 ally, but those only which shall be made in pursuance of the Constitution, have that rank.

21 **23 Thus, the particular phraseology of the Constitution of the United States confirms and**  
22 **strengthens the principle, supposed to be essential to all written Constitutions, that a law re-**  
23 **pellant to the Constitution is void, and that courts, as well as other departments, are bound**  
24 **by that instrument.**

25 **24 "Congress shall make no law respecting an establishment of religion ..."**

26 **MORE DEFINITE STATEMENT FOR DECLARATORY, SPECIAL, MANDATORY, AND**  
27 **EXEMPLARY INJUNCTIVE & MANDAMUS RELIEF**

28 (1) This is a Civil Action against violation of the Constitutions of the United States & California.

1 (2) This is a Civil Action against an unfair and unjust law, void for vagueness, and founded on *illegitimate animus* in Congress, and against establishment of religion by State and Federal law.

3 (3) This is a Civil Action founded against civil rights and property rights violation by a regulation of an executive department; and contract, express or implied, with the government;

5 (4) This is a Civil Action with actions for damages, liquidated or unliquidated, pertaining to those matters of this case that are sounding in tort. The words 'sounding in tort' are in terms referable to these four classes of cases, and specifically do not imply that any civil rights violations, whether unconstitutional violations, congressional violations, or violations of any rights by regulation of an executive department; or violation of any rights by any contract, expressed or implied, with the United States Government, whether or not sounding in tort, are outside the jurisdiction of this Court. Accordingly, the fact that plaintiff has presented an administrative tort claim to the EPA is relevant to suit in this court. Accordingly, the fact that plaintiff has presented a Wrongful Takings Claim in the Court of Federal Claims which is relevant to suit in this court.

14 **THE RULES MUST BE DISCHARGED!**

15 **CREATION OF THE SPECIAL DEPUTY ATTORNEY GENERAL LEVYING OFFICER.**  
16 **DETINUE SUR BAILMENT, REMISSION AND REVERSION, WRIT OF AVOWDSON.**

17 *writ of unspeakable errors, divide et regnes!* **RELIEF: UNCONSTITUTIONAL LAWS IN VI-**  
18 **OLATIONS OF FIRST, FOURTH, AND TENTH AMENDMENT PROTECTIONS.**

19 **§ 3729. FALSE CLAIMS; MISTAKE! PROHIBITION! EQUITABLE ESTOPPEL!**

20 *writ of unspeakable errors, divide et impera!* **RELIEF: VIOLATIONS OF TITLE 18. U.S.C.**

21 **§ 241. CONSPIRACY. MALICE AND DECEIT; ABUSE OF PROCESS AND DISCRETION.**

22 **§ 242. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW. FRANCHISE TRESPASS.**

23 **§ 245. FEDERALLY PROTECTED RIGHTS. FRAUD UPON THE COURT. ABUSE.**

24 **§ 3729. FALSE CLAIMS; HARD BARGAIN, FRAUD, ACCIDENT, TRUST, HARDSHIP;**

25 **MALICE. WRITS OF EQUITABLE ESTOPPEL! PROHIBITION! NEGLIGENCE!**

26 **WRITS OF ERRORS OF IMPUNITY AND MISCARRIAGE OF JUSTICE; INJUSTICE.**

27 **The presence of malicious government motives in these intentional and fraudulent actions is**

28 **the hallmark of tyranny and despotism, and the incontrovertible facts of vindictive actions**

1 **and illegitimate animus rise to unconstitutional and unconscionable abuses of process and de-**  
2 **ceit under color of law and fraud upon the Court with negligently arbitrary endangerment.**

3 Plaintiff exhausted all administrative remedies. TRUE!

4 Plaintiff filed an administrative claim (Standard form 95) and was denied. TRUE!

5 Plaintiff notified agency inspector general of allegations of fraud, malice, deceit. TRUE!

6 Plaintiff filed tort and takings claims as counter-claims in district court on motions to reopen.

7 COURT ordered motions stricken as improperly captioned. APPEALED

8 Plaintiffs filed emergency Appeals Court review for reckless negligent endangerment, mandamus  
9 denied, other motions moot. Original judicial remedy: case closed...

10 ABSOLUTE REMEDIES, POPULAR ACTION; WRONGFUL TAKINGS: COURT OF CLAIMS

11 ABSOLUTE REMEDIES, CIVIL ACTION; TORTS: NINTH CIRCUIT COURT OF APPEALS.

12 Declarations; the wrongful taking of private property not for the public benefit requiring the pay-  
13 ment of much more than just compensation; *quo warranto certiorarified peremptory mandamus*

14 Law of Congress, illegitimate purpose and intent; void for vagueness; *illegitimate animus*, adjudic-  
15 ation on the merits. *writ of error coram nobis*. **CONSTITUTIONAL CHALLENGE!**

16 Contract, express or implied, with the government; **YES**, *writs of prohibition, equitable estoppel*.

17 Regulation of an executive department; *writ quo warranto, incidental & peremptory mandamus*

18 Popular Actions at Common Law for damages, liquidated or unliquidated;

19 **MONEY MANDATED BY THE CONSTITUTION FOR WRONGFUL TAKINGS CLAIM.**

20 Actions for Errors; *coram nobis*; errors of impunity and miscarriage of justice, manifest injustice;

21 Actions for Writs; equitable estoppel; prohibition; *quo warranto certiorarified mandamus*;

22 The wrongful taking of private property not for the public benefit under color of law false pretense  
23 of official right requiring the payment of more than just compensation;

24 **WRITS OF RIGHT! WRIT OF REMAINDER, CERCLA AND RCRA CITIZEN SUITS!**

25 False Claims; Conspiracy; Deprivation of Rights under color of law; Federally Protected Rights!

26 Trespassing; Usurpation, Despotism and Tyranny; reckless negligent endangerment;

27 Kidnapping of a corporation, Ravishment of Ward; joint repository of waste on private property.

28 Wrongful taking of private property for the public benefit requiring payment of just compensation.

1 **WRIT OF AVOWDSON, CONCURRENT JURISDICTIONS: THREE JUDGE COURTS;**

2 The Takings Clause is a money-mandating provision of the Constitution

3 Preseault v. ICC, 494 U.S. 1, 11-12 (1990).

4 Specifically, the Court of Federal Claims does not have jurisdiction over suits against  
5 the Government for discrimination, whether stated as a violation of equal protection, due  
6 process, or otherwise. Mullenberg v. United States, 857 F.2d 770, 773 (Fed.Cir. 1988). The court  
7 lacks jurisdiction over claims for fraud, Brown v. United States, 105 F.3d 621, 623 (Fed. Cir.  
8 1997), nor does the court have jurisdiction over alleged violations of criminal statutes, Campbell v.  
9 United States, 229 Ct. Cl. 706, 707 (1981).

10 The Court of Federal Claims has no power to adjudicate torts, Shearin v. United States, 992 F.2d  
11 1195, 1197 (Fed. Cir. 1993); Eastport S.S. Corp. v. United States, 178 Ct. Cl. 599, 614, 372 F.2d  
12 1002, 1013 (1967), whether brought under the FTCA or otherwise.

13 The Tucker Act specifically excludes tort claims from the jurisdiction of the [Federal Claims]  
14 court, 28 U.S.C. § 1491(a)(1), and the FTCA vests exclusive jurisdiction over tort actions in the dis-  
15 trict courts, id. § 1346(b). Accordingly, the fact that plaintiff has presented an administrative tort  
16 claim to the EPA is relevant to his suit in this court.

17 The question was first considered in Langford v. United States, 101 U.S. 341, 25 L. ed. 1010, un-  
18 der the statute above cited, giving the court of claims power to hear and determine 'all claims foun-  
19 ded upon any law of Congress, or upon any regulation of an executive department, or upon any  
20 contract, express or implied, with the government of the United States.' The suit was brought to re-  
21 cover for the use and occupation of certain lands and buildings of which possession had been for-  
22 cibly taken by agents of the government, against the will of Langford, who claimed title to the  
23 lands. It was held that the act of the United States in taking and holding possession was an unequi-  
24 vocal tort, and a distinction was drawn between such a case and one where the government takes  
25 for public use lands to which it asserts no claim of title, but admits the ownership to be private or  
26 individual, in which class there arises an implied obligation to pay the owner its just value. 'It is a  
27 very different matter where the government claims that it is dealing with its own, and recognizes no  
28 title superior to its own. In such case the government, or the officers who seize such property, are

1 guilty of a tort, if it be in fact private property.' It was held that the limitation of the act to cases of  
 2 contract, express or implied, 'was established in reference to the distinction between actions arising  
 3 out of contracts, as distinguished from those founded on torts, which is inherent in the essential  
 4 nature of judicial remedies under all systems, and especially under the system of the common law.'  
 5 [182 U.S. 222, 227] The case was rested largely upon that of *Gibbons v. United States*, 8 Wall. 269,  
 6 19 L. ed. 453, in which an army contractor who had agreed to furnish certain oats at a fixed price  
 7 had, after the delivery of part of the amount, been released from the obligation to deliver the bal-  
 8 ance. He was, however, carried before the military authority, and, influenced by threats, agreed to  
 9 deliver, and did deliver, the full quantity of oats specified in the contract. He brought suit for the  
 10 difference between the contract price and the market price of the oats at the time of delivery. It was  
 11 said that 'if such pressure was brought to bear upon him as would make the renewal of the contract  
 12 void, as being obtained by duress, then there was no contract, and the proceeding was a tort for  
 13 which the officer may have been personally liable,' but that it was not within the court of claims  
 14 act.

15 Nor can the settled distinction, in this respect, between contract and tort, be evaded by framing the  
 16 claim as upon an implied contract.' 'An action in the nature of assumpsit for [182 U.S. 222, 228] the  
 17 use and occupation of real estate will never lie where there has been no relation of contract between  
 18 the parties, and where the possession has been acquired and maintained under a different or adverse  
 19 title, or where it is tortious and makes the defendant a trespasser.' No distinction was noticed  
 20 between the phraseology of the original act and the Tucker act, though it seems to have been as-  
 21 sumed that the case was one for the recovery of 'damages' sounding in tort.

22 There are no expressed or implied promises from the EPA to Arman, Hutchens, or IMMI.

23 The EPA never had permission from Ted Arman or IMMI, the District Court ordered it.

24 All is retained which has not been surrendered. "In every stage of these oppressions we have Petitioned for  
 25 Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury."

26 **§ 1982. Property rights of citizens: VOID AS UNCONSTITUTIONAL AN IMPROPER LAW**

27 **§ 1988. Proceedings in vindication of civil rights**

1 23. All citizens of the United States shall have the same right, in every State and Territory, as is  
2 enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and person-  
3 al property.

4 24. This is a civil rights action under the 5th amendment to the constitution of the United States  
5 of America for the wrongful taking of private property requiring the payment of just compensation.

6 25. Pursuant to the provisions of § 1988, petitioner hereby requests admission and recognition as  
7 private attorney general in this matter, with all of the privileges and responsibilities attendant  
8 thereto, including the right to equal protection and privilege of electronic case filing .

9 26. The Senate Committee on the Judiciary stated "...citizens must have the opportunity to re-  
10 cover what it costs them to vindicate these rights in court."

11 **More than 150 federally owned or operated facilities have been placed on the NPL, including**  
12 **abandoned mine sites, areas where the government has issued oil and gas leases, and federal**  
13 **lands leased to private entities for pesticide manufacturing. See Glicksman, Pollution on the**  
14 **Federal Lands III: Regulation of Solid and Hazardous Waste Management, 13 Stan. Env'tl.**  
15 **L.J. 3, 7-15 (1993). With limited exceptions, none of these facilities is eligible for Super-**  
16 **fund-financed remedial action. 40 C.F.R. § 300.425(b)(3). May the United States, through**  
17 **EPA or the Justice Department, seek to recover cleanup costs at these facilities from the fed-**  
18 **eral agencies that operate them? May a private PRP who has been sued or held liable in a suit**  
19 **by the United States seek contribution from federal facility operators? What bearing does the**  
20 **definition of a "person" under § 101(21) of CERCLA have on these issues?**

21 **The federal government has been found liable as an owner or operator in cases aside from**  
22 **FMC. See, e.g., Elf Atochem N. Am., Inc. v. United States, 868 F. Supp. 707 (E.D. Pa. 1994)**  
23 **(United States liable at site previously owned by it and leased during World War II for the**  
24 **production of DDT). It also has been found liable as an arranger and transporter under §**  
25 **107(a)(3) and (4) of CERCLA. See, e.g., Price v. United States Navy, 818 F. Supp. 1326 (S.D.**  
26 **Cal. 1992) (United States liable as transporter of shipments of paints containing metals, used**  
27 **asbestos gaskets, and insulation to a junkyard in the 1930s); New York v. Allied Corp., 789 F.**  
28 **Supp. 93, 98 (N.D.N.Y. 1992) (Air Force sent hazardous solvents to dump site), aff'd, 39 F.3d**

1 1011 (9th Cir. 1994). In other cases, the courts have exonerated the federal government using  
2 reasoning similar to that of the Vertac court. E.g., *Rospatch Jessco Corp. v. Chrysler Corp.*,  
3 962 F. Supp. 998 (W.D. Mich. 1995) (operator liability); *Washington v. United States*, 930 F.  
4 Supp. 474 (W.D. Wash. 1996) (operator liability); *Elf Atochem N. Am. v. United States*, 914 F.  
5 Supp. 1166 (E.D. Pa. 1996) (arranger liability); *Maxus Energy Corp. v. United States*, 898 F.  
6 Supp. 399 (N.D. Tex. 1995), *aff'd without opinion*, 95 F.3d 1148 (5th Cir. 1996) (operator and  
7 arranger liability). Cf. *United States v. Iron Mountain Mines, Inc.*, 987 F. Supp. 1263 (E.D.  
8 Cal. 1997) (finding the United States not liable as an owner). CERCLA bars pre-enforcement  
9 review of cleanup standards selected by EPA under §§ 104 or 106 for removal or remedial ac-  
10 tions. § 113(h). Based on the text of that provision, what argument is available that pre-en-  
11 forcement review is nevertheless available to challenge the adequacy of a remedial action  
12 chosen for a federal facility listed on the NPL? See *Fort Ord Toxics Project, Inc. v. California*  
13 *Envtl. Protection Agency*, 189 F.3d 828 (9th Cir. 1999).

14 **Whereas Almighty God hath created the mind free; that all attempts to influence it by**  
15 **temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hy-**  
16 **pocrisy and meanness, and are a departure from the plan of the Holy author of our religion,**  
17 **who being Lord both of body and mind, yet chose not to propagate it by coercions on either,**  
18 **as it was in his Almighty power to do; that the impious presumption of legislators and rulers,**  
19 **civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have as-**  
20 **sumed dominion over the faith of others, setting up their own opinions and modes of thinking**  
21 **as the only true and infallible, and as such endeavouring to impose them on others, hath es-**  
22 **tablished and maintained false religions over the greatest part of the world, and through all**  
23 **time; that to compel a man to furnish contributions of money for the propagation of opinions**  
24 **which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that**  
25 **teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving**  
26 **his contributions to the particular pastor, whose morals he would make his pattern, and**  
27 **whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry**  
28 **those temporary rewards, which proceeding from an approbation of their personal conduct,**  
**are an additional incitement to earnest and unremitting labours for the instruction of man-**  
**kind; that our civil rights have no dependence on our religious opinions, any more than our**  
**opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the**

1 public confidence by laying upon him an incapacity of being called to offices of trust and  
2 emolument, unless he profess or renounce this or that religious opinion, is depriving him in-  
3 juriously of those privileges and advantages to which in common with his fellow-citizens he  
4 has a natural right; that it tends only to corrupt the principles of that religion it is meant to  
5 encourage, by bribing with a monopoly of worldly honours and emoluments, those who will  
6 externally profess and conform to it; that though indeed these are criminal who do not with-  
7 stand such temptation, yet neither are those innocent who lay the bait in their way; that to  
8 suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the  
9 profession or propagation of principles on supposition of their ill tendency, is a dangerous fal-  
10 lacy, which at once destroys all religious liberty, because he being of course judge of that tend-  
11 ency will make his opinions the rule of judgment, and approve or condemn the sentiments of  
12 others only as they shall square with or differ from his own; that it is time enough for the  
13 rightful purposes of civil government, for its officers to interfere when principles break out  
14 into overt acts against peace and good order; and finally, that truth is great and will prevail if  
15 left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear  
16 from the conflict, unless by human interposition disarmed of her natural weapons, free argu-  
17 ment and debate, errors ceasing to be dangerous when it is permitted freely to contradict  
18 them: *Be it enacted by the General Assembly*, That no man shall be compelled to frequent or  
19 support any religious worship, place, or ministry whatsoever, nor shall be enforced, re-  
20 strained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of  
21 his religious opinions or belief; but that all men shall be free to profess, and by argument to  
22 maintain, their opinion in matters of religion, and that the same shall in no wise diminish en-  
23 large, or affect their civil capacities.

24 And though we well know that this assembly elected by the people for the ordinary purposes  
25 of legislation only, have no power to restrain the acts of succeeding assemblies, constituted  
26 with powers equal to our own, and that therefore to declare this act to be irrevocable would  
27 be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asser-  
28 ted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal  
the present, or to narrow its operation, such act shall be an infringement of natural right.

*Statutes at Large of Virginia*, vol. 12 (1823): 84-86.

1 "Happy for us, that when we find our constitutions defective and insufficient to secure the  
2 happiness of our people, we can assemble with all the coolness of philosophers and set it to  
3 rights, while every other nation on earth must have recourse to arms to amend or to restore  
4 their constitutions." Thomas Jefferson after 2 weeks of deliberation on the U.S. Constitution  
5 John Locke , an English philosopher admired by Jefferson and many other Founders, suc-  
6 cinctly explained what later came to be called the non-delegation doctrine :

7 **The legislative cannot transfer the power of making laws to any other hands, for it being  
8 but a delegated power from the people, they who have it cannot pass it on to others.**

9 **Similarly, the Supreme Court, in the 1892 case of Field v. Clark , declared:**

10 **That Congress cannot delegate legislative power to the President is a principle universally  
11 recognized as vital to the integrity and maintenance of a system of government ordained by  
12 the Constitution.**

#### 13 **FEDERAL QUESTION?**

14 **This matter originated as a petition to reopen a "closed" district court proceeding and a peti-  
15 tion for stay of Execution in the termination of Iron Mountain Mines, Inc. by the Ninth Cir-  
16 cuit Court of the consent decree with cross claims & counter-claims, intervention by right,  
17 and allegations of fraud upon the court sufficient to establish improper jurisdiction before the  
18 Court. This complaint argues that there is jurisdiction in rem pursuant to Article III of the  
19 Constitution as it arises under the constitution of the United States because petitioners have  
20 explicit contractual property rights guaranteed by patent title from the President of the  
21 United States that petitioners allege were violated and usurped from the Congress & legis-  
22 lature of California by the United States Environmental Protection Agency and the United  
23 States Department of Justice, which is therefore a breach of contract and a constructive trust  
24 by the United States to the injury and damages of the petitioners and the people of the State of  
25 California, the people of the United States, and members of a class within California and a  
26 class within the United States of America.**

27 **We are entitled to life, liberty, and property, and we have never ceded to any sovereign  
28 power whatever, a right to dispose of either without our consent.**

**Petitioners allege that the United States Environmental Protection Agency and Depart-  
ment of Justice fraudulent assertion of authority to promulgate regulations concerning ease-  
ments or drainage on these mining lands in the State of California, such authority being re-**

1 served by patent title solely to the legislature of California, when such property was conveyed  
2 with rights, privileges, and immunities of warrants of patent title from the President of the  
3 United States, is an infringement of patent title and a violation of petitioners constitutionally  
4 protected interests, and a constitutional violation for the failure of Congress or the Judiciary  
5 to properly restrict this fraudulently asserted authority of the judicial, legislative, and execut-  
6 ive branches of the United States government.

7 Furthermore, because the right to relief depends upon the construction or application of fed-  
8 eral law, and concerns claims for relief arising out of civil rights (§ 1343), United States as de-  
9 fendant (§ 1346), injuries under federal law (§ 1357), supplemental jurisdiction (§1367),  
10 United States as defendant (§ 1402), venue of cases under chapter 5 of title 3 (§ 1413), creation  
11 of remedy (§ 2201), further relief (§ 2202), process and procedure (§ 2361), three-judge court  
12 (§ 2284), constitutional question (§ 2403), quiet title action (§ 2409a), federal lien (§ 2410), li-  
13 ability of United States (§ 2674), exceptions (§ 2680), false claims (§ 3729) so territorial, sub-  
14 ject matter, concurrent, and pendant State claim jurisdiction is now properly before this  
15 court. Petitioners claim quo Warranto with incidental and peremptory mandamus by right  
16 because they contest the Environmental Protection Agencies actions and will rectify the abuse  
17 of discretion and imbalance of government authority, and because petitioners demand equal  
18 protection and due process of law, because the EPA actions are implicitly an assertion of un-  
19 questionable and unchallengeable authority to bury the petitioners property, and by extension  
20 to bury the entire State of California and even the entire United States under unquantified  
21 and unlimited amounts of potentially toxic hazardous waste sludge, solely for the benefit of  
22 fishes, all the while claiming such authorities are scientifically justified as somehow protecting  
23 the “environment”, in disregard and breach of duty to implement remedies that are fully pro-  
24 tective of human health and the environment. Petitioners allege that EPA claims that such ac-  
25 tions have any scientific merit are false claims, and petitioners further allege that these EPA  
26 actions are unscientific, unreasonable, unfair and unjust, and are unsupportable by scientific  
27 or economic accountability. Petitioners allege that such an absurd and illogical result of exec-  
28 utive mismanagement, facilitated by unfair and unjust Congressional legislation, and coddled  
in Judicial swaddling and Judicial deference, without any timely means of recourse or for re-  
dress of grievances, is an abomination of unbounded executive authority, and petitioners raise  
these allegations to a constitutional question with claims of unlawful jurisdiction by the EPA

1 and DOJ; hence the petitioners claim by writ of ancient *demesne* “*Breve soke*”, and convene  
 2 by right of the “Vice Warden of the Arboretums, Gales & Stannaries” a “Miner’s Court” un-  
 3 der Local Rules for a determination of franchise jurisdiction according to the Constitutions of  
 4 the United States and of the State of California, and according to the laws of California, the  
 5 laws of the United States of America, and the common law of England, and petitioners motion  
 6 for writ of *certiorari* to resolve these questions and the allegations of fraudulent executive au-  
 7 thority and jurisdiction by the EPA and DOJ. Jurisdiction is also improperly reserved to the  
 8 District Courts by the covenants of patent title and Federal law.

9 “The English practice . . . [is] more necessary to be observed here than there” John Jay, 1793  
 10 Petitioners Claim Breach of Grant and Infringement of Absolute Sovereign Patent Title, Con-  
 11 structive Trust, Usurpation of a Franchise, Ulterior Government Motive, Malice, Fraud upon  
 12 the Court, Negligent and Unnecessary Imminent and Substantial Endangerment, False  
 13 Claims, Deceit.

14 **COMPLAINT OF TREASON, MANIFEST INJUSTICE, TYRANNY AND DESPOTISM**  
 15 **Extent of the Wrongful Taking under color of law and false pretense of official right**

16 It is well established that a physical taking is defined by the government’s corporeal viola-  
 17 tion of private property. As the Supreme Court has noted, “where real estate is actually in-  
 18 vaded . . . so as to effectually destroy or impair its usefulness, it is a taking, within the mean-  
 19 ing of the Constitution.” *Loretto v. Teleprompter Manhattan CATB Corp.*, 458 U.S. 419, 427  
 20 (1982) (quoting *Pumpelly v. Green Bay Co.*, 80 U.S. (13 Wall.) 166 (1871)). The Court has  
 21 similarly emphasized that, “[t]he hallmark of a physical taking is government occupation of  
 22 real property.” *Alameda Gateway, Ltd. v. United States*, 45 Fed. Cl. 757, 762 (1999), quoting  
 23 *Loretto*, 458 U.S. At 426 (1982).

24 However, it has also recognized the possibility of compensable stigmatic injuries that ex-  
 25 tend beyond the tangible aspects of a physical taking. In *Hendler v. United States*, it held that  
 26 “if fear of a hazard would affect the price a knowledgeable and prudent buyer would pay to a  
 27 similarly well-informed seller, diminution in value caused by that fear may be recoverable as  
 28 part of just compensation.” *Hendler v. United States*, 38 Fed. Cl. 611, 625 (1995) (quoting  
*United States v. 760.807 Acres of Land*, 731 F.2d 1443, 1447 (9th Cir. 1984)), *aff’d* 175 F.3d  
 1374 (Fed. Cir. 1999); see also *Shelden v. United States*, 34 Fed. Cl. 355, 373 (1995) (reducing  
 post-taking fair market value of property due to stigma associated with earthquake damage).

1 Iron Mountain Mines contend that the physical wrongful taking of the Brick Flat Pit produced a  
2 compensable impact on the entire Property's value. Petitioners claim that the remedial action pro-  
3 duced two linked effects flowing from the EPA's physical occupation of the Brick Flat Pit. The  
4 first effect was the physical taking of the Brick Flat Pit itself, which continues to prevent Iron  
5 Mountain Mines, Inc. et al from commercially exploiting the Brick Flat Pit. The second effect was  
6 the diminution of the Property's overall market value due to the stigma associated with possible li-  
7 ability to any buyer for the CERCLA action. It should be noted that this "stigma" amounts to con-  
8 siderably more than a mental attitude on the part of buyers. It is based upon a very real possibility  
9 that any commercial activity on the property might lead to regulatory prohibition or real physical  
10 danger. While T.W. Arman and John Hutchens are not convinced that in fact the Property is unus-  
11 able, it seems clear that a reasonably prudent buyer would consider that quite probable, and be un-  
12 willing to purchase the property at any positive price, or share in the stigma of exterminating the  
13 United States of America State of California domesticated Winter Run Chinook Salmon.

14 "the mere existence of this huge quantity of waste on the property, even in a constructed repository,  
15 creates too great a potential [CERCLA] liability for anyone to consider purchasing the land."

16 In summary, Iron Mountain Mines Inc. expert in the valuation of contaminated property argues  
17 that anyone buying the Property before the EPA completes the removal action and removes the  
18 sludge from the Open Pit would potentially bear liability under CERCLA for costs incurred in the  
19 removal action.

20 Consequently, a reasonable purchaser would discount the purchase price of the Property by at least  
21 the amount of the liability assumed in the post-removal action condition of the Property.

22 Similarly, Iron Mountain Mines will present evidence that once the presence of hazardous waste  
23 has stigmatized property, a reasonable purchaser of said property would discount the sales price for  
24 the costs of removal of all of the offending material currently disposed in the Brick Flat Pit. Iron  
25 Mountain Mines noted that the stigma flows from the possibility of leakage of contaminants from  
26 the waste in the Open Pit and the potential "consequent liability placed upon Iron Mountain Mines,  
27 Inc. and T.W. Arman under CERCLA."  
28

1 According to Iron Mountain Mines, Inc. it follows that just compensation should be the difference  
2 between the Property's current pre-taking fair market value and the sum resulting from the cost of  
3 the removal of the hazardous waste in the Open Pit added to the CERCLA liability incurred.

4 The stigma associated with general contamination and burden of infamy associated with natural re-  
5 source damage and fish extinction dramatically affects the entire Property's value.

6 Hendler and Shelden permit recovery for diminution in value due to the general fear of a hazard  
7 caused by a taking, assuming that the hazard's affect on marketability is measurable. See Hendler,  
8 38 Fed. Cl. at 625 (quoting *United States v. 760.807 Acres of Land*, 731 F.2d 1443, 1447 (9th Cir.  
9 1984)

10 (“[I]f fear of a hazard would affect the price a knowledgeable and prudent buyer would pay to a  
11 similarly well-informed seller, diminution in value caused by that fear may be recoverable as part  
12 of just compensation.”)); see Shelden, 34 Fed. Cl. at 373. It is generally recognized that general  
13 market perception of contamination on a future development site results in the depreciation of  
14 property value.

15 Iron Mountain Mines argument is that the Open Pit's wrongful taking & false allegations of fish  
16 endangerment negatively impacts the entire Property's value on the basis of the evidence.

17 In analyzing this impact, the' computations regarding the Property's diminution in value as a result  
18 of the stigma associated with false claims of hazardous waste and fish extinction.

#### 19 **The Removal Action As A Special Benefit**

20 When only a portion of private property is physically taken, the amount of compensation  
21 owed for the property of Iron Mountain Mines must be reduced by any special benefits from the  
22 government action accruing to the remainder of the property. Hendler, 38 Fed. Cl. at 1380. Special  
23 benefits are benefits which inure to the particular property suffering the taking, rather than to the  
24 general public. The United States placed a statutory lien for “unrecovered past response costs” and  
25 stated that the removal action conferred a special benefit upon the Property which we should de-  
26 duct from any ultimate damages valuation, and inferred that it was justified as a “windfall” lien.

27 Such arguments, however, lead nowhere. Even if the Court accepts the government's  
28

1 argument that the removal action benefits the Property's value, the United States will be unable to  
2 include any evidence regarding the amount by which such benefit increases the Property's value.  
3 Thus, no offset of compensable damages for the benefits allegedly conferred by the removal action  
4 are possible.

5 Having resolved these issues, let us turn to the determination of the Property's fair market value as  
6 a function of calculating just compensation owed T.W. Arman & Iron Mountain Mines, Inc.

7 Just compensation for a wrongful taking under the Fifth Amendment does not require that a de-  
8 prived owner be put "in the same position monetarily as he would have occupied if his property  
9 had not been taken." *Almota Farmers*, 409 U.S. at 474 (internal citations omitted). The necessary  
10 corollary to this basic damages principle is that the Court may place a deprived owner in a better  
11 position by a Fifth Amendment wrongful taking recovery than if the wrongful taking at issue had  
12 not occurred.

13 The fair market value of the highest and best use of the Property before and after the action.

14 A reasonable valuation of the Property's value as a mine after the EPA's removal action estimates  
15 the Property's value based upon the 20 million plus tons of proven ore reserves plus 5 million tons  
16 of probable reserves, the discovery of Apex Mining Claims to horizons of and the assay of minerals  
17 and the prices of Gold, Silver, Copper, Zinc, Iron, Aluminum, Magnesium, Manganese, Vanadium,  
18 Titanium, Cobalt, Nickel, and other minerals and by-products at close to \$18,400,000,000 (billion).  
19 Assuming the EPA estimate of mining and remediation at \$1.400,000,000 (billion) is correct, The  
20 fair market value would be \$17,000,000,000 (billion). Add to that a fair market value of the land  
21 surface (4,400 acres) for the future complete development (1 billion), yields a gross takings value  
22 of \$18,000,000,000 (billion) of Just Compensation Valuation

23 Iron Mountain Mines calculates the fair market value of mining on the Property prior to the taking  
24 by determining the present value of the future income stream of minerals that could have mined on  
25 the Property absent the taking over a twenty year period. This methodology required an estimate of  
26 the annual production of minerals on the Property to determine the present value of the future roy-  
27 alty income stream.

1 Iron Mountain Mines, Inc., T.W. Arman and John Hutchens assume that solution mining would  
2 have averaged annual production of 500,000 tons of mineral products and a royalty of  
3 \$100,000,000 (million) per year. Multiplying projected annual production by this royalty rate, Iron  
4 Mountain Mines, Inc. and T.W. Arman projected annual royalties from January 1989 until January  
5 2009 of \$2,000,000,000.

6 Iron Mountain Mines therefore believe the present value of lost mining opportunity on the Prop-  
7 erty as of January 1, 1989, to the present at \$2,000,000,000.

8 It is well established that “comparable sales are considered by the courts to be the best evidence of  
9 fair market value, and thus preferable to other forms of valuation.” *Stearns Co., Ltd. v. United*  
10 *States*, 53 Fed. Cl. 446, 458 (2002) (citing *United States v. 50 Acres of Land*, 469 U.S. 24 (1984));  
11 *Kirby Forest Indus. Inc. v. United States*, 467 U.S. 1 (1984). Other valuation methods may prove  
12 useful, but a comparable sales methodology is a generally superior indicator of value if an active  
13 real estate market existed in the vicinity of the subject property prior to the taking. See *Florida*  
14 *Rock Indus., Inc. v. United States*, 45 Fed. Cl. 21, 35 (1999) (citing *Whitney Benefits, Inc. v.*  
15 *United States*, 18 Cl. Ct. 394, affirmed 926 F.2d 1169 (Fed. Cir.), cert. denied, 502 U.S. 952  
16 (1991)).

17 Here, Iron Mountain Mines valued the Property’s worth for mining since no comparable comparis-  
18 on was or is available, by analyzing the Property’s pre-taking future income stream.

19 Iron Mountain Mines claims that future income stream analysis is appropriate here because the  
20 valuation of mineral interests is preferably done by determining the present value of a future in-  
21 come stream. Iron Mountain Mines support this view by arguing that the federal government, in its  
22 *Uniform Appraisal Standards for Federal Land Acquisitions*, states that, “[p]roperty having a  
23 highest and best use for mineral production may be appraised utilizing an income approach when  
24 comparable sales are lacking.” *Uniform Appraisal Standards* at 23-24 (internal citations omitted).

25 Iron Mountain Mines further points to *Whitney Benefits, Inc. v. United States*, in which the Federal  
26 Circuit approved of the use of future income stream analysis, as support for the relevance of future  
27 income stream analysis in the present case. See 962 F.2d 1169 (Fed. Cir. 1991).

1 Deprived owner T.W. Arman & Iron Mountain Mines, Inc. is entitled to interest on just compensa-  
2 tion awarded pursuant to Fifth Amendment takings. *Stearns Co., Ltd, v. United States*, 53 Fed. Cl.  
3 446, 466 (2002) (citing *Kirby Forest Indus. v. United States*, 467 U.S. 1 (1984)). Thus, an award to  
4 Iron Mountain Mines, with compounded prejudgment interest from the date of the taking until the  
5 date of the judgment is proper. See *Id.* (citing *United States v. Thayer-West Point Hotel Co.*, 329  
6 U.S. 585, 588 (1947); *Miller v. United States*, 223 Ct. Cl. 352, 360 (1980). We date the taking as  
7 having actually commenced on January 1st, 1989, as the first day of the production for the solution  
8 mining plan, for the calculation of pre-judgment interest. Iron Mountain Mines also uses this date  
9 because it marks the Courts approval of the physical intrusion from which all damages in this mat-  
10 ter arise. Interest computation will be based upon the Contracts Disputes Act, 41 U.S.C. §§ 601-13  
11 (1982). See *Jones v. United States*, 3 Cl. Ct. 4, 7 (1983). Iron Mountain Mines further seeks awards  
12 of attorney fees and costs incurred as a result of litigation to Iron Mountain Mines, Inc. T.W. Ar-  
13 man and John F. Hutchens under the Uniform Relocation Assistance and Real Property Acquisition  
14 Policies Act of 1970. 42 U.S.C. § 4601 et seq. (1995 & 2002 Supp.).

15 Iron Mountain Mines, Inc., T.W. Arman and John F. Hutchens also seek compensation for stig-  
16 matic injuries. Iron Mountain Mines, Inc. et al have been unfairly blamed for the endangerment and  
17 possible extinction of salmon and trout in the Sacramento River, a crime of infamy if ever there  
18 was one, notwithstanding that there is no evidence that any fish have been killed in the affected  
19 reaches of the Sacramento River since at least 1969, seven years before T.W. Arman. purchased the  
20 property, or that T.W. Arman and Iron Mountain Mines, Inc. did not actively mine the massive  
21 sulfide ores found to be the source of the minerals passively migrating from the property and al-  
22 leged to pose an “imminent and substantial endangerment” to the environment, and in disregard of  
23 contributory factors, particularly the United States construction of dams that destroyed the habitat  
24 of the salmon and trout necessary for their reproduction, and without consideration of other factors  
25 affecting the fishes demise, such as urban run-off, untreated sewage, ranching, farming, global  
26 warming, and other forms of habitat destruction.

27 When the EPA first conducted its remedial investigation of Iron Mountain Mines, it considered  
28 “Among the remedial action alternatives that could be implemented by the EPA, the total removal

1 of the source and sediments in the receiving waters (Alternative CA-10) is considered the only  
2 remedy for the Iron Mountain Mine site which is capable of meeting project cleanup objectives and  
3 the full requirements of the Clean Water Act (CWA). This alternative would effectively eliminate  
4 discharges from Iron Mountain and restore all tributaries to pristine condition. This alternative was  
5 based on total removal of all the source of contamination and disposing of them in a RCRA-ap-  
6 proved facility.”

7 Without digressing to consider the notion of disposing of millions of tons of valuable ore and min-  
8 ing by-products, it will suffice to observe that having recognized that there was a viable alternative  
9 that was fully protective of human health and the environment, the EPA elected to proceed with a  
10 remedial action (removal) that was less than fully protective of human health and the environment,  
11 and then and thereafter disregarded its duty and responsibilities to implement a remedial action that  
12 was fully protective of health and environment.

13 For these reasons Iron Mountain Mines, Inc. et al dispute the United States lawful authority to con-  
14 duct these CERCLA remedial actions (removal) and demand the return of the property and restora-  
15 tion of rights, privileges, and immunities of patent title to the possession and enjoyment of T.W.  
16 Arman and John F. Hutchens.

17 Because the United States has no actual justification for its actions, and the only remedy found to  
18 be fully protective of human health and the environment is to finish the mining begun 150 years  
19 ago, which is what Iron Mountain Mines, Inc. was doing before the EPA interfered, the EPA  
20 should be found liable for the wrongful taking of private property not for the public benefit requir-  
21 ing the payment of more than just compensation under the 5<sup>th</sup> amendment of the constitution.

22 T.W. Arman and Iron Mountain Mines, Inc. used “due care” in the purchase of the property, be-  
23 cause copper, zinc, and cadmium were not listed as “hazardous substances” under the relevant pro-  
24 visions of the Clean Water Act (CWA) in 1976 when the property was purchased

25 **CONCLUSION of the extent of the WRONGFUL TAKINGS UNDER COLOR OF LAW**

26 Iron Mountain Mines, Inc., T.W. Arman and John Hutchens claim that the EPA’s remedial (re-  
27 moval) actions constitute a taking of the Iron Mountain Mines, Inc. property warranting just com-  
28 pensation to Iron Mountain Mines, Inc. et al under the Fifth Amendment of the constitution of the

1 United States for a partial takings of private property with actual damages of lost mining opportu-  
2 nities plus stigmatic injuries and property and incidental damages of \$7,074,500,000 (billion). We  
3 therefore seek an award to T.W. Arman of \$7,074,500,000 (billion) in just compensation, treble  
4 damages form of statute, detinue sur bailment, reversion, interest, attorney's & expert fees & costs.  
5 Plaintiff's "Two Miners" submit that plaintiff's mutual interests are undivided interests.

6 Wherefore, the United States is liable for the wrongful taking of private property requiring the  
7 payment of more than just compensation under the 5<sup>th</sup> amendment of the constitution of the United  
8 States, we demand judgment against the United States of seven billion, seventy four million, and  
9 five hundred thousand dollars treble damages form of statute for the wrongful partial takings and  
10 stigmatic injury vindictive acts on Iron Mountain Mines, Inc. property plus interest, fees, and costs.  
11 Demand for declaratory injunctive relief, concurrent jurisdictions, § 2680. Exceptions!

12 **FALSE CLAIMS & IMMINENT HAZARD AND SUBSTANTIAL ENDANGERMENT!**

13 **VINDICTIVE ACTIONS, WRONGFUL TAKING UNDER COLOR OF LAW**

14 **FALSE CLAIMS, FALSE PRETENSE OF OFFICIAL RIGHT, LIBEL AND SLANDER!**

15 **FRAUD UPON THE COURT, ABUSE OF PROCESS, MALICIOUS PROSECUTION!**

16 **FRAUD & FALSE CLAIMS, DELIBERATE IGNORANCE OF ACTUAL INFORMATION**

17 **ERRORS OF IMPUNITY AND MISCARRIAGE OF JUSTICE! MANIFEST INJUSTICE**

18 Differing court interpretations of a statute "is evidence that the statute is ambiguous and unclear."

19 U.S. v. Iron Mountain Mines, Inc., 812 F. Supp. 1528, 1557 (E.D. Cal. 1993).

20 Courts frequently interpret an ambiguous contract term against the interests of the party who pre-  
21 pared the contract and created the ambiguity. This is common in cases of adhesion contracts and in-  
22 surance contracts. A drafter of a document should not benefit at the expense of an innocent party  
23 because the drafter was careless in drafting the agreement.

24 In Constitutional Law, statutes that contain ambiguous language are void for vagueness. The lan-  
25 guage of such laws is considered so obscure and uncertain that a reasonable person cannot determ-  
26 ine from a reading what the law purports to command or prohibit. This statutory ambiguity de-  
27 prives a person of the notice requirement of Due Process of Law, and, therefore, renders the statute  
28 unconstitutional. West's Encyclopedia of American Law, edition 2.

**RELIEF:§ 1982. PROPERTY RIGHTS OF CITIZENS**

**RELIEF:§ 1988. PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS**

**QUO WARRANTO & CERTIORARIFIED MANDAMUS & INTERVENTION APPEAL**

**SUPERSEDEAS IN THE UNITED STATES NINTH CIRCUIT COURT OF APPEALS**

*writ of unspeakable errors, divide et impera!* **RELIEF: VIOLATIONS OF TITLE 18. U.S.C.**

**§ 241. CONSPIRACY. MALICE AND DECEIT; ABUSE OF PROCESS AND DISCRETION.**

**§ 242. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW. FRANCHISE TRESPASS.**

**§ 245. FEDERALLY PROTECTED RIGHTS. FRAUD UPON THE COURT. PIRACY.**

**§ 3729. FALSE CLAIMS; HARD BARGAIN, FRAUD, ACCIDENT, TRUST, HARDSHIP;**

**MALICE. WRITS OF EQUITABLE ESTOPPEL! PROHIBITION! NEGLIGENCE!**

**The presence of malicious government motives in these intentional and fraudulent actions is the hallmark of tyranny and despotism, and the incontrovertible facts of vindictive actions and illegitimate animus rise to unconstitutional and unconscionable abuses of process and deceit under color of law and fraud upon the Court with negligently arbitrary endangerment.**

**RELIEF:§ 1982. Property rights of citizens, § 1988. Proceedings in vindication of civil rights.-**

**Plaintiff's Pray for Relief, Application for Relief and Money Damages according to Proof.**

**In 1967 the Colorado Supreme Court, involving injury caused by a State fish hatchery, said:**

**"Where there is no power on the part of a State agency to condemn private property for a claimed public use, a property owner whose property has been damaged by such agency cannot be held to have commenced an action for "inverse condemnation" in a situation where no right exists in a governmental agency to proceed under eminent domain. The plaintiffs, in demanding relief in the form of damages covering the loss sustained by them, are not forced to accept the measure of damages usually applicable to a condemnation case."**

**Where, as distinguished from the performance of ministerial acts, discharge of the duties of an administrative agency calls for the exercise of discretion or judgment, mandamus is not an instrument for correcting or reviewing the exercise of such discretion unless it is shown that the action was arbitrary or capricious or prompted by wrong motives; or, as is sometimes stated, mandamus does not lie to control discretion of an administrative agency in the**

1 absence of caprice, passion, partiality, fraud, some ulterior motive, arbitrary conduct, or mis-  
2 apprehension of the law. Mandamus is not an appropriate process to obtain a review of an  
3 order entered by an agency acting within its jurisdiction, and the remedy by mandamus re-  
4 quires a plain duty and a clear legal right. No method by which the pueblo water right  
5 can be lost to the municipality that succeeded a primitive Spanish or Mexican pueblo has yet  
6 been declared by the high court of California. On the contrary, the California Supreme Court  
7 has specifically ruled out some suggested ways in which the pueblo water right might be lost  
8 or impaired. These include nonuse and statutory forfeiture. In no case in which abandonment  
9 of a pueblo right or its loss by prescription or estoppel was alleged has any loss of water right  
10 been decreed.

11 In a 1902 California case, claimants under a grant of part of a riparian tract of land which  
12 granted enough water to operate a hydraulic ram, contended that all rights under the reser-  
13 vation had been lost by abandonment and adverse use. The fact that the grantor's successor  
14 in interest abandoned the use of the hydraulic ram in favor of other means of use was not  
15 deemed material by the supreme court, because his right to the use of the water did not cease  
16 when he ceased to operate the ram. "As a riparian owner he is not bound to use the water, or,  
17 in case of non-user, lose his right to use"

18 DEMAND AND ABSOLUTE ORDER FOR AN IMPROVED STATE  
19 CERTIFICATE OF VERIFIED CLASS ACTION FAIRNESS ACTION

20 In The United States Ninth Circuit Court of Appeals

21 Chief Justice Taney from *Martin v. Waddell*, "When the Revolution took place the people of  
22 each state became themselves sovereign, and in that character hold the absolute right to all  
23 their navigable waters, and the soils under them, for their own common use, subject only to the  
24 rights since surrendered by the constitution to the general government."

25 Prescriptive Rights (Doctrine of Mutual Prescription or Equitable Apportionment)

26 Allows for junior rights holders to immunize themselves from senior rights holders. This is  
27 important because in times of water shortage, junior rights holders typically have to give up a  
28 larger share of the water. Applies the Common law to adverse possession to water. Gener-

ally means that if you are a junior user and have been openly and notoriously using water adverse to a senior rights holder for a few years, then you have priority equal to him. See *Pasadena v. Alhambra* (1949), *Los Angeles v. San Fernando* (1975)

California Constitution Article 10, § 2, "reasonable and beneficial use" § 4 navigation California Endangered Species Act, California Fish & Game , California Water Code The PTD also stands alone as a common law principle.

Seminal case was *National Audubon Society v. Superior Court Alpine County* forcing the SWRCB to amend water rights permits to LA Department of Water and Power. Cases to protect fish and wildlife (Big Bear Lake and Putah Creek Cases, SWRCB decision WR 95-4).

In California, rights are usufructuary and pertain to the use of the water

Prayer for Declaratory and Extraordinary Injunctive Relief, Damages according to Proof.

December 14, 2011 Signature: 

s/ John F. Hutchens, standing commissioner, principal, curator & faculty chair, agent & factor, and for Mr. T.W. Arman, *pro se*; sole stockholder of Iron Mountain Mines, Inc. Pres., CEO.

Petitions & motion for *absolute order*; writs of error *coram nobis*; *fieri fascii*, *mutatis mutandis*

*Subpoena ad testificandum and perpetuation of testimony de benne esse.*

02/11/2010 12 Received Petitioner John F. Hutchens pleading "certiorarified mandamus, administrative mandamus, adverse claims...."NO FILE - NAN ( 1.5 inch bound, unindexed pleading has not been scanned) . [7230421] (CW)

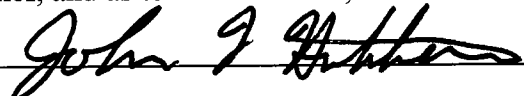
Court of Appeals #: 09-17411 Docketed: 10/29/2009, Termed: 02/22/2011

Nature of Suit: 1893 Environmental Matters USA, et al v. T.W. Arman, et al

Appeal From: U.S. District Court for Eastern California, Sacramento. Fee Status: Paid

Verification affidavit, agent for CLASS ACTION FAIRNESS ACT CROSS COMPLAINT:

"I hereby affirm 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 swear I believe them to be true."

December 14, 2011 Signature: 

s/ John F. Hutchens, duly authorized agent of T.W. Arman, Commissionerto FEMA & EPA,

Tenant-in-Chief, Warden, Superintendent, Curator, Custodian, Steward, Practical Farmer.

In the UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT

CERTIFICATE AND PROOF OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that I am above the age of eighteen years and that I am not a party to the action herein.

My name and address is: Zardo Segundero 3600 Broder Publin, Ca

On the date entered below, I caused to be served: Court of Appeals Ninth Circuit 11-15383

**TWO MINERS & 8000 ACRES OF LAND, (IRON MOUNTAIN MINES, INC. et al,) T.W. ARMAN and JOHN F. HUTCHENS, (real parties in interest) Jointly on behalf of all similarly situated under GOD, nominally indivisible with Mr. T.W. Arman, plaintiff, Appeals #: 09-17411-09-70047-09-71150/ 11-15383, CFCDC No. 09-207 L; lien on 00779-TCW ORIGINAL MANDAMUS, PRAYERS AND APPLICATIONS FOR PROHIBITION & QUO WARRANTO; MANDATE - CITIZEN SUIT; INSURANCE FRAUD 1033, 1034 WRITS FOR EXTRAORDINARY RELIEF: CERTIORARIFIED INTERVENTIONS: WRONGFUL TAKINGS; CROSS CLAIMS; COUNTERCLAIMS; ERRORS OF IMPUNITY AND MISCARRIAGES OF JUSTICE; HOSTIS HUMANI GENERIS, TREASON; PIRACIES, EXTORTIONS, MONOPOLIES, DESPOTISMS, TYRANNIES; SLAVERY & GRAVE CRIMES ON THE PUBLIC TRUST VERIFIED CLASS ACTION FAIRNESS ACT.**

v.

**UNITED STATES, Defendants**

THE UNITED STATES OF AMERICA STATE OF CALIFORNIA, EPA, DOJ, NRDC, BATELLE, CH2MHill, ASTRAZENECA, STARR INTERNATIONAL COMPANIES, INC., AMERICAN INTERNATIONAL GROUP, INC., & NINTH CIRCUIT COURT

Actual Defendant's **COMPLAINT of MANIFEST INJUSTICE**

**"NO IMMUNITY UNDER § 1983"**

To be served by first class mail, postage prepaid, upon the following party by placing a true and correct copy of the same in a sealed envelope with proper postage affixed thereto and depositing the same in the United States Mail addressed as follows:

**Larry Martin Corcoran,**

**U.S. Department of Justice Counsel**

**P.O. 7611**

**WASHINGTON, DC 20044-7611**

**DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the United States of America that the information contained in the Certificate and Proof of Service is true and correct.

**Executed on:**

DATE 12-15-2011 Signature: Zardo Segundero

printname Zardo Segundero