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INTERVENTION COMPLAINT & CITIZENS' ARREST OF JUDICIAL TAKING SUPERSEDEAS BY RIGHT PETITION FOR STAY PENDING APPEAL RULE INTERLOCUTORY APPEAL IN THE UNITED STATES OF AMERICA

COURT OF APPEALS FOR THE NINTH CIRCUIT

CITIZENS OF THE UNITED STATES OF AMERICA STATE OF CALIFORNIA, EX REL. ARMAN & HUTCHENS, AKA: TWO MINERS & 8000 ACRES OF LAND, T.W. ARMAN and JOHN F. HUTCHENS, IRON MOUNTAIN MINES, INC. ET AL Grantees, Patentees; Owner & Operator.

v.

USDC-CES respondent & DEFENDANT UNITED STATES OF AMERICA STATE OF CALIFORNIA; Grantors WRONGFUL TAKING UNDER A FALSE PRETENSE OF OFFICIAL RIGHT.

related cases USDC-CES -91-0768 DFL/JFM, 2:10-cv-232 FCD CMK PS, USCFC No. 09-207 L CIRCUIT Nos. 09-17411, 09-70047, 09-71150 BREACH OF PATENT TITLE *SUPERSEDEAS* WRIT *DE EJECTIONE FIRMAE*; WASTE PETITION FOR ADVERSE CLAIMS WRITS OF POSSESSION & EJECTMENT; FRAUD & DECLARED DETRIMENT & CONTINUING NEGLECT & FAILURE: TREBLE DAMAGES JOINT AND SEVERAL TRESPASSERS VOID AND VACATE, REMISSION & REVERSION, DETINUE SUR BAILMENT, CORAM NOBIS

380. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants; and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

INTERVENTION COMPLAINT & CITIZENS' ARREST OF JUDICIAL TAKING SUPERSEDEAS BY RIGHT PETITION FOR STAY PENDING APPEAL RULES INTERLOCUTORY APPEAL IN THE UNITED STATES OF AMERICA

COURT OF APPEALS FOR THE NINTH CIRCUIT

CITIZENS OF THE UNITED STATES OF	
AMERICA STATE OF CALIFORNIA,	)**related cases USDC-CES -91-0768 DFL/JFM,**
EX REL. ARMAN & HUTCHENS, aka:	)**2:10-cv-232 FCD CMK PS, USCFC No. 09-207 L**
TWO MINERS & 8000 ACRES OF LAND,	)**CIRCUIT Nos. 09-17411, 09-70047, 09-71150**
T.W. ARMAN and JOHN F. HUTCHENS,	) **BREACH OF PATENT TITLE *SUPERSEDEAS***
IRON MOUNTAIN MINES, INC. ET AL	)*QUI TAM, QUO WARRANTO, PARENS PATRIAE*
Grantees, Patentees; Owner & Operator.	)**PETITION FOR ADVERSE CLAIMS WRIT:**
v.	)**DEPRIVATIONS OF CONSTITUTIONALLY**
USDC-CES respondent & DEFENDANT	) **PROTECTED CIVIL RIGHTS; FALSE CLAIMS**
UNITED STATES OF AMERICA	)**CONSTITUTIONAL QUESTION CERTIFICATE**
STATE OF CALIFORNIA; Grantors	)**ABUSE OF DISCRETION & PROCESS,**
WRONGFUL TAKING UNDER A FALSE	)**EQUAL PROTECTION & LIBERTY.**
PRETENSE OF OFFICIAL RIGHT.	)**MALICIOUS PROSECUTION FOR CRIME OF**
TITLE 18, §241,§242,§245	) **INFAMY EX POST FACTO, ATTAINDER.**

381. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a Cloud Upon the Same.

[Approved March 24; effect July 1, 1874.]

ARREST of adverse claimants writ of possession and ejectment, Motion: leave to file quo Warranto

INTERVENTION COMPLAINT & CITIZENS' ARREST OF JUDICIAL TAKING
SUPERSEDEAS BY RIGHT PETITION FOR STAY PENDING APPEAL RULES
INTERLOCUTORY APPEAL IN THE UNITED STATES OF AMERICA

COURT OF APPEALS FOR THE NINTH CIRCUIT

CITIZENS OF THE UNITED STATES OF AMERICA STATE OF CALIFORNIA, EX REL. ARMAN & HUTCHENS, aka: TWO MINERS & 8000 ACRES OF LAND, T.W. ARMAN and JOHN F. HUTCHENS, IRON MOUNTAIN MINES, INC. ET AL Grantees, Patentees; Owner & Operator.

v.

USDC-CES respondent & DEFENDANT UNITED STATES OF AMERICA STATE OF CALIFORNIA; Grantors

ACTUAL, DEFAMATION, FREEHOLD, & PENAL DAMAGES, EJECTMENT.

related cases USDC-CES -91-0768 DFL/JFM, 2:10-cv-232 FCD CMK PS, USCFC No. 09-207 L CIRCUIT Nos. 09-17411, 09-70047, 09-71150 BREACH OF PATENT TITLE *SUPERSEDEAS* LETTERS OF MARQUIS AND REPRISAL; APPLICATION FOR EX PARTE WRIT OF POSSESSION EXECUTED UNDER OATH: ADMINISTRATIVE MANDAMUS REMEDY LOCATORS VESTED AND ACCRUED EXISTING RIGHTS OF EXCLUSIVE POSSESSION AND ENJOYMENT. DEMAND: NAME CLEARING HEARING, JURY TRIAL

SURRENDER OF PRESENT POSSESSION COMPELLED BY LETTERS PATENTS
PETITION TO STRIKE FOR FRAUD UPON THE COURTS & FALSE CLAIMS,
RECKLESS NEGLIGENT ENDANGERMENT PUBLIC TRUST DOCTRINE
JUDGMENT OF COURT & CONSENT DECREE ENJOINED, VACATED, AND SET ASIDE
Ejectment, 426 n. Quiet title, action to, 738. Intervention, Eminent Domain 1244.
IRON MOUNTAIN MINE REVERSIONER CREATION BY LETTERS PATENTS
***Qui tam*: wrongful taking under a false pretense of official right.**

ARREST of adverse claimants writ of possession and ejectment, Motion: leave to file quo Warranto

Eritis insuperabiles, si fueritis inseparabiles. Explosum est illud diverbium: Divide, & impera, cum radix & vertex imperii in obedientium consensus rata sunt. Breve Soke & Parens Patriae.

TABLE OF AUTHORITIES

FEDERAL CASES

OTHER AUTHORITIES

It is a familiar "maxim that a statutory term is generally presumed to have its common law meaning." Taylor v. United States, 495 U.S. 575, 592 (1990). As we have explained, "where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them." Morissette v. United States, 342 U.S. 246, 263 (1952). [n.3]

At common law, extortion was an offense committed by a public official who took "by colour of his office" [n.4] money that was not due to him for the performance of his official duties. [n.5] A demand, or request, by the public official was not an element of the offense. [n.6] Extortion by the public official was the rough equivalent of what we would now describe as "taking a bribe." It is clear that petitioner committed that offense. [n.7] The question is whether the federal statute, insofar as it applies to official extortion, has narrowed the common law definition.

Congress has unquestionably expanded the common law definition of extortion to include acts by private individuals pursuant to which property is obtained by means of force, fear, or threats. It did so by implication in the Travel Act, 18 U.S.C. § 1952 see United States v. Nardello, 393 U.S. 286, 289-296 (1969), and expressly in the Hobbs Act. The portion of the Hobbs Act that is relevant to our decision today provides:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

"(b) As used in this section-

"(2) The term `extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951.

The present form of the statute is a codification of a 1946 enactment, the Hobbs Act, [n.8] which amended the federal Anti Racketeering Act. [n.9] In crafting the 1934 Act, Congress was careful not to interfere with legitimate activities between employers and employees. See H. R. Rep. No. 1833, 73rd Cong., 2d Sess., 2 (1934). The 1946 Amendment was intended to encompass the conduct held to be beyond the reach of the 1934 Act by our decision in United States v. Teamsters, 315 U.S. 521 (1942). [n.10] The Amendment did not make any significant change in the section referring to obtaining property "under color of official right" that had been prohibited by the 1934 Act. Rather, Congress intended to broaden the scope of the Anti Racketeering Act and was concerned primarily with distinguishing between "legitimate" labor activity and labor "racketeering," so as to prohibit the latter while permitting the former. See 91 Cong. Rec. 11899-11922 (1945).

Many of those who supported the Amendment argued that its purpose was to end the robbery and extortion that some union members had engaged in, to the detriment of all labor and the American citizenry. They urged that the Amendment was not, as their opponents charged, an anti labor measure, but rather, it was a necessary measure in the wake of this Court's decision in United States v. Teamsters. [n.11] In their view, the Supreme Court had mistakenly exempted labor from laws prohibiting robbery and extortion, whereas Congress had intended to extend such laws to all American citizens. See, e. g., 91 Cong. Rec. 11910 (1945) (remarks of Rep. Springer) ("To my mind this is a bill that protects the honest laboring people in our country. There is nothing contained in this bill that relates to labor. This measure, if passed, will relate to every American citizen"); id., at 11912 (remarks of Rep. Jennings) ("The bill is one to protect the right of citizens of this country to market their products without any interference from lawless bandits").

Although the present statutory text is much broader [n.12] than the common law definition of extortion because it encompasses conduct by a private individual as well as conduct by a public official, [n.13] the portion of the statute that refers to official misconduct continues to mirror the common law definition. There is nothing in either the statutory text or the legislative history that could fairly be described as a "contrary direction," Morissette v. United States, 342 U. S., at 263, from Congress to narrow the scope of the offense.

The legislative history is sparse and unilluminating with respect to the offense of extortion. There is a reference to the fact that the terms "robbery and extortion" had been construed many times by the courts and to the fact that the definitions of those terms were "based on the New York law." 89 Cong. Rec. 3227 (1943) (statement of Rep. Hobbs); see 91 Cong. Rec. 11906 (1945) (statement of Rep. Robsion). In view of the fact that the New York statute applied to a public officer "who asks, or receives, or agrees to receive" unauthorized compensation, N. Y. Penal Code § 557 (1881), the reference to New York law is consistent with an intent to apply the common law definition. The language of the New York statute quoted above makes clear that extortion could be committed by one who merely received an unauthorized payment. [n.14] This was the statute that was in force in New York when the Hobbs Act was enacted.

The two courts that have disagreed with the decision to apply the common law definition have interpreted the word "induced" as requiring a wrongful use of official power that "begins with the public official, not with the gratuitous actions of another." United States v. O'Grady, 742 F. 2d, at 691; see United States v. Aguon, 851 F. 2d, at 1166 (" `inducement' can be in the overt form of a `demand,' or in a more subtle form such as `custom' or `expectation' "). If we had no common law history to guide our interpretation of the statutory text, that reading would be plausible. For two reasons, however, we are convinced that it is incorrect.

First, we think the word "induced" is a part of the definition of the offense by the private individual, but not the offense by the public official. In the case of the private individual, the victim's consent must be "induced by wrongful use of actual or threatened force, violence or fear." In the case of the public official, however, there is no such requirement. The statute merely requires of the public official that he obtain "property from another, with his consent, . . . under color of official right." The use of the word "or" before "under color of official right" supports this reading. [n.15]

Second, even if the statute were parsed so that the word "induced" applied to the public officeholder, we do not believe the word "induced" necessarily indicates that the transaction must be initiated by the recipient of the bribe. Many of the cases applying the majority rule have concluded that the wrongful acceptance of a bribe establishes all the inducement that the statute requires. [n.16] They conclude that the coercive element is provided by the public office itself. And even the

two courts that have adopted an inducement requirement for extortion under color of official right do not require proof that the inducement took the form of a threat or demand. See United States v. O'Grady, 742 F. 2d, at 687; United States v. Aguon, 851 F. 2d, at 1166. [n.17]

(This case satisfies the quid pro quo requirement of McCormick v. United States, 500 U. S. -- (1991), because the offense is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts; fulfillment of the quid pro quo is not an element of the offense. our construction of the statute is informed by the common law tradition from which the term of art was drawn and understood. We hold today that the Government & public official has obtained a payment to which [they] he was not entitled, knowing that the payment was made in return for official acts.)

Our conclusion is buttressed by the fact that so many other courts that have considered the issue over the last 20 years have interpreted the statute in the same way. [n.21] Moreover, given the number of appellate court decisions, together with the fact that many of them have involved prosecutions of important officials well known in the political community, [n.22] it is obvious that Congress is aware of the prevailing view that common law extortion is proscribed by the Hobbs Act. The silence of the body that is empowered to give us a "contrary direction" if it does not want the common law rule to survive is consistent with an application of the normal presumption identified in Taylor and Morissette, supra.

By a preponderance of the evidence, petitioner contends that common law extortion wrongful takings under a false pretense of official right. Post, at 2-3; see post, at 4 (offense of extortion "was understood ... [as] a wrongful taking under a false pretense of official right") (emphasis in original); post, at 5. It is perfectly clear, [however,] that although extortion accomplished by fraud was [is] a well recognized type of extortion, there were [are] other types as well. As the court explained in Commonwealth v. Wilson, 30 Pa. Super. 26 (1906), an extortion case involving a payment by a would be brothel owner to a police captain to ensure the opening of her house:

"The form of extortion most commonly dealt with in the decisions is the corrupt taking by a person in office of a fee for services which should be rendered gratuitously; or when compensation is permissible, of a larger fee than the law justifies, or a fee not yet due; but this is not a complete defini-

tion of the offense, by which I mean that it does not include every form of common law extortion." Id., at 30. See also Commonwealth v. Brown, 23 Pa. Super. 470, 488-489 (1903) (defendants charged with and convicted of conspiracy to extort because they accepted pay for obtaining and procuring the election of certain persons to the position of school teachers); State v. Sweeney, 180 Minn. 450, 456, 231 N.W. 225, 228 (1930) (alderman's acceptance of money for the erection of a barn, the running of a gambling house, and the opening of a filling station would constitute extortion) (dicta); State v. Barts, 132 N.J.L. 74, 76, 83, 38 A.2d 838, 841, 844 (Sup. Ct. 1944) (police officer, who received $1,000 for not arresting someone who had stolen money, was properly convicted of extortion because "generically extortion is an abuse of public justice and a misuse by oppression of the power with which the law clothes a public officer"); White v. State, 56 Ga. 385, 389 (1876) (If a ministerial officer used his position "for the purpose of awing or seducing" a person to pay him a bribe that would be extortion).

The dissent's theory notwithstanding, not one of the cases it cites, see post, at 4-5, and n. 3, holds that the public official is innocent unless he has deceived the payor by representing that the payment was proper. Indeed, none makes any reference to the state of mind of the payor, and none states that a "false pretense" is an element of the offense. Instead, those cases merely support the proposition that the services for which the fee is paid must be official and that the official must not be entitled to the fee that he collected--both elements of the offense that are clearly satisfied in this case. The complete absence of support for the dissent's thesis presumably explains why it was not advanced by petitioner in the District Court or the Court of Appeals, is not recognized by any Court of Appeals, and is not advanced in any scholarly commentary. [n.23]

In affirming [Agency] conviction, the Court of Appeals should note that the instruction should not require the jury to find that [Agency] had demanded or requested the money, or that he had conditioned the performance of any official act upon its receipt. 910 F. 2d 790, 796 (CA11 1990). The Court of Appeals held, however, that "passive acceptance of a benefit by a public official is sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power. The official need not take any specific action to induce the offering of the benefit." Ibid. (emphasis in original). [n.1]

This statement of the law by the Court of Appeals for the Eleventh Circuit is consistent with holdings in eight other Circuits. [n.2] Two Circuits, however, have held that an affirmative act of inducement by the public official is required to support a conviction of extortion under color of official right. United States v. O'Grady, 742 F. 2d 682, 687 (CA2 1984) (en banc) ("Although receipt of benefits by a public official is a necessary element of the crime, there must also be proof that the public official did something, under color of his public office, to cause the giving of benefits"); United States v. Aguon, 851 F. 2d 1158, 1166 (CA9 1988) (en banc) ("We find ourselves in accord with the Second Circuit's conclusion that inducement is an element required for conviction under the Hobbs Act"). Because the majority view is consistent with the common law definition of extortion, which we believe Congress intended to adopt, we endorse that position.

See: Evans v. United States (90-6105), 504 U.S. 255 (1992).

The guarantees of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power. Among those guarantees is the right granted by the Sixth Amendment to an accused in a criminal proceeding in a federal court 'to have the Assistance of Counsel for his defence'. 'This is one of the safeguards ... deemed necessary to insure fundamental human rights of life and liberty' and a [315 U.S. 60, 70] federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel. Johnson v. Zerbst, 304 U.S. 458, 462 , 463 S., 58 S.Ct. 1019, 1022. Even as we have held that the right to the assistance of counsel is so fundamental that the denial by a state court of a reasonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel, may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment, Powell v. Alabama, 287 U.S. 45 , 53 S.Ct. 55, 84 A.L.R. 527, so are we clear that the 'Assistance of Counsel' guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. If the right to the assistance of counsel means less than this, a valued constitutional safeguard is substantially impaired.

To preserve the protection of the Bill of Rights for hard-pressed defendants, we indulge every reasonable presumption against the waiver of fundamental rights. Aetna Insurance Co. v. Kennedy,

301 U.S. 389 , 57 S.Ct. 809; Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292 , 57 S.Ct. 724

See: GLASSER v. U.S., 315 U.S. 60 (1942) 315 U.S. 60

INTERLOCUTORY APPEAL AND ABSOLUTE ORDER OF SUPERSEDEAS BY RIGHT

An interlocutory appeal, in the law of civil procedure is an appeal of a ruling by a trial court that is made before the trial itself has concluded. Most jurisdictions generally prohibit such appeals, requiring parties to wait until the trial has concluded before they challenge any of the decisions made by the judge during that trial. However, many jurisdictions make an exception for decisions that are particularly prejudicial to the rights of one of the parties. For example, if a party is asserting some form of immunity from suit, or is claiming that the court completely lacks personal jurisdiction over them, then it is recognized that being forced to wait for the conclusion of the trial would violate their right not to be subjected to a trial at all.

Federal courts

The Supreme Court of the United States delineated the test for the availability of interlocutory appeals, called the collateral order doctrine, for United States federal courts in the case of Lauro Lines s.r.l. v. Chasser et al., 490 U.S. 495 (1989), holding that under the relevant statute (28 U.S.C. § 1291) such an appeal would be permitted only if:

the outcome of the case would be conclusively determined by the issue;

TRUE!

the matter appealed was collateral to the merits;

TRUE!

and, the matter was effectively unreviewable if immediate appeal were not allowed.

TRUE!

The Supreme Court created the test in the case Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949), where it was applied to a requirement of bond to be posted in certain stockholders derivative actions by plaintiffs, in anticipation of being liable for defendant's attorney's fees. Since the substantial deterrent effect of the statute would be meaningless if not enforceable at the outset of litigation, but did not touch on the merits of plaintiff's claim, the Court allowed interlocutory appeal

from the trial court's decision. 337 U.S. at 546-47. The doctrine was restricted in Digital Equipment Corp. v. Desktop Direct Inc., 511 U.S. 863 (1994), which added an explicit importance criterion to the test for interlocutory appeals, holding that relief on a claim of immunity from suit because of a previous settlement agreement could not come through interlocutory appeal. The Supreme Court stated that the only matters of sufficient importance to merit a collateral appeal were "those originating in the Constitution or statutes". 511 U.S. at 879. **EXACTLY!**

Several U.S. statutes directly confer the right to interlocutory appeals, including appeals from orders denying arbitration, 9 U.S.C. § 16, and some judicial actions against the debtor upon filing bankruptcy proceedings, 11 U.S.C. § 362(a). There is a major split in the United States courts of appeals as to whether a stay of proceedings should issue in the district court while interlocutory appeals on the arbitrability of disputes are decided. Compare Bradford-Scott Data Corp., Inc. v. Physician Computer Network, 128 F.3d 504 (7th Cir. 1997), and Britton v. Co-op Banking Group, 916 F.2d 1405 (9th Cir. 1990). An interlocutory appeal under the collateral order doctrine usually merits a stay of proceedings while the appeal is being decided. Currently, the Second and Ninth Circuits have refused to stay proceedings in the district court while an arbitration issue is pending [See, Motorola Credit Corp. v. Uzan, 388, F.3d 39, 53-4 (2d Cir. 2004; Britton v. Co-Op Banking Group, 916 F.2d 1405, 1412 (9th Cir. 1990)]. The Seventh, Tenth and Eleventh Circuit courts conversely hold that a non-frivolous appeal warrants a stay of proceedings. See, Bradford-Scott Data Corp. v. Physician Computer Network, Inc., 128 F.3d, 504, 506 (7th Cir. 1997); Blinco v. Green Tree Servicing, LLC, 366 F.3d 1249, 1251-2 (11th Cir. 2004); McCauley et al. v. Halliburton Energy Services, Inc., (citation unavailable, but see: http://ca10.washburnlaw.edu/cases/2005/06/05-6011.htm)

On January 9, 2001 the U.S. Supreme Court issued a decision, Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers. The decision reduces the protection of isolated wetlands under Section 404 of the Clean Water Act (CWA), which assigns the U.S. Army Corps of Engineers (Corps) authority to issue permits for the discharge of dredge or fill material into "waters of the United States." Prior to the SWANCC decision, the Corps had adopted a regulatory definition of "waters of the U.S." that afforded federal protection for almost all of the nation's wetlands.

The Supreme Court also concluded that the use of migratory birds to assert jurisdiction over the site exceeded the authority that Congress had granted the Corps under the CWA. The Court interpreted that Corps jurisdiction is restricted to navigable waters

Executive Order 11990, Protection of Wetlands, still applies to these wetlands. We, therefore, continue to recommend that all wetlands that could be potentially affected by a highway proposal be adequately identified and assessed for probable impacts.

The FHWA will not apply Executive Order 11990 to drainage ditches, either highway or for other purposes, which were not originally excavated in waters of the United States (as currently defined), or to sites exhibiting wetland characteristics which are solely caused and supported by human activities, such as but not limited to, stormwater runoff which is concentrated by man-made ditches or agricultural irrigation leakage, and which are not considered jurisdictional waters of the United States by the Corps of Engineers.

Divisions should contact the local Corps of Engineers field offices to determine how the new jurisdictional limits under SWANCC may be specifically interpreted on a local basis. If issues on the jurisdictional status of isolated wetlands arise, please contact Paul Garrett, 303-969-5772x332

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

Authorities of Sec. 2326 Perfected Title Law. 1881.

JUDICIAL DETERMINATION OF RIGHT OF POSSESSION

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

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

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

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

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

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

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

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

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

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

LOCATORS RIGHTS OF POSSESSION AND ENJOYMENT;

§ 1988. Proceedings in vindication of civil rights

CAUSE OF ACTION: EJECTMENT

Adverse Claims ...to their and their heirs and assigns use and behoof forever.

Agricultural College Patent: 360 acres of land, May 1st, 1862, President Abraham Lincoln.

United States of America State of California Patent: January 4th, 1875, Governor Newton Booth.

April 8th, 1880 Location of the "Lost Confidence" lode mining claim (Iron Mountain mine, apex of the Shasta Copper belt, Flat Creek mining district). 1895 to present: Largest mine in California. Discoveries & Junior Locations. Battery storage & hydropower pump-storage reclamation and special uses.

T.W. Arman, owner; John F. Hutchens, joint venturer, administrator, grantees agent, and expert.

In performance of the complete development of Iron Mountain mine, remission and prosecution of same under the General Mining Law and by Patent Title.

Relocation of the Camden and Magee Agricultural College Land Patent of 1862.

Discoveries §336: Assays of diamond drill cores to 1700 ft by USGS in 1952; horizons of recoverable metals, junior locations recoverable by modern methods.

Remediation of copper, cadmium, and zinc in the Flat Creek mining district.

Where an agent commits an active trespass on behalf of his principal, such principal is a "joint trespassers" with the agent. Williams v. Inman, 57 S.E. 1000, 1010, 1 Ca.App. 321.

Joint and several trespassers damages & ejectment; *coram nobis incidental and peremptory mandamus*

Including accounting of damages. Leave *for quo Warranto administrative and judicial mandamus.*

"Persons engaged in committing the same trespass are "joint and several trespassers," and not "joint trespassers," exclusively. Like persons liable on a joint and several contract, they may all be sued in one action, or one may be sued alone, and cannot plead the nonjoinder of the others in abatement;

and so far is the doctrine of several liability carried that the defendants, where more than one are sued in the same action, may sever in their pleas, and the jury may find several verdicts, and on several verdicts of guilty may assess different sums as damages." The executive officer of a corporation, who is the stockholder, and full management of its affairs, who's rights were violated by defendants who instigated and controlled the joint and several trespassers in willfully infringed complainants mine, and for bringing disrepute to the corporation, and violating environmental law to spoil said property, diminish its value, and claim a lien upon said property for recompensation for unnecessary arbitrary and capricious actions under color of law.

Because of the corporeal and perpetual injuries, including the damages found due complainant, on an accounting, a suit will lie against them to recover the property and the amount of such decree from them individually, when, through their control and influence, they caused the corporation to be unable to transfer its property and to declare and pay dividends pending the suit against it, by which it was rendered substantially yet falsely insolvent. See Saxlehner v. Elsner, 140 Fed. 938, 941 adopting the definition I Lovejoy v. Murray , 3 Wall. 1, 18 L. Ed. 129.

PETITION FOR REVIEW OF ABUSE OF PROCESS AND ABUSE OF DISCRETION BY FALSE MALICIOUS PROSECUTION FOR CRIME OF INFAMY EX POST FACTO LAW

"It has been justly thought a matter of importance to determine from what source the United States derives its authority... The question here proposed is whether our bond of union is a compact entered into by the states, or whether the Constitution is an organic law established by the People. To this we answer: 'We the People... ordain and establish this Constitution'...

WE NEED TO KNOW THE LINE ON WHICH TO DRAW THE LIMITS OF FEDERAL POWERS, PARTICULARLY THE JUDICIARY; WE WILL SO DETERMINE HERE!

Therefore, to "establish certain limits not to be transcended by the government."

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

"Full relief and restore possession to the party entitled thereto. a general verdict for plaintiff on a complaint which alleges that the plaintiff is entitled to the possession of certain described property,

which is unlawfully detained by the defendant, and the possession of which the plaintiff prays to recover, is held by the United States Supreme Court to be sufficient."

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

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

"The owner is not liable for pollution of stream incidental to placer mining, or to washing iron ore. It is classed among non-actionable injuries. Nor will such use of the stream be enjoined even if an action lies, except in willful or extreme cases. Clifton Co. v. Pye 87 Ala. 468 6So 192. Hill v. King 4 M.R. 533. 8 Cal. 337, Atchison v. Peterson 1 M.R. 583 20 Wall 501.

California Statute Sec. 1426 7/1/09

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

.. In all applications therefore, pending at the date of the passage of the Act of 1872, although the patents were not issued till afterward, they conveyed the surface-ground embrace by the interior boundaries of the survey, and the right to follow the vein as above indicated, and also all other veins, lodes, or ledges, throughout their entire depth, the top or apex of which lay inside of such surface-lines extended downward vertically, although such other veins, lodes, or ledges, might so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of the surface-location *provided,* that their right of possession to such outside parts of such other veins, lodes, or ledges was confined to such portions thereof as lay between vertical planes drawn downward through the end-lines of their locations, so continued in their direction that such planes would intersect such exterior parts of such veins, lodes, or ledges; no right being granted, however, to the claimant of a vein or lode which extended in its downward course beyond the vertical lines of his claim, to enter upon the surface of a claim owned or possessed by another.

U.S. Supreme Court Revives Citizen Suit Standing

Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 2000 U.S. Lexis 501, 2000 WL 16307 (Jan. 12, 2000).

RCRA Citizen Suit for Injunctive Relief

Environmental Law; Fish and Fishing; Law of the Sea; Mine and Mineral Law; Pollution; Riparian Rights; Solid Wastes, Hazardous Substances, and Toxic Pollutants; Tort Law; Water Rights.

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Federal pollution definition gets court challenge

"The National Center for Conservation Science & Policy has joined five other environmental groups in filing a lawsuit against the Environmental Protection Agency over a change in the Clean Water Act."

October 23, 2006

FEDERAL DISTRICT COURT CREATES THREE PRONG POLLUTION EXCLUSION TEST

PROFESSIONAL SERVICES EXCLUSION RE-VISITED

In *Mid-Continent Casualty Company v. Davis-Ruiz Corporation*, 2006 WL 2850067 (Oct. 3, 2006), Petitioner submits that due notice was given to both the California and United States Attorney General of a citizen suit by the private attorney general in the vindication of civil rights, that the action involves civil rights that are in the interests of California and United States citizens, and on behalf of a class, but the attorney generals are moot. Prior to this enactment, two or more of several co-tenants could not join in an action of ejectment, the interest of each being separate and distinct. Df Johnson v. Sejmlbeda, 5 Cal. 149; Tkrockmorton v. Burr, 5 Cal. 401; Welch y. Sullivan, 8 Cal. 187. Nor could a tenant in common maintain an action at law to recover his share of the rents and profits from his co-tenant. Pico v. Columbet, 12 Cal. 420. But that principle had no application to the case of money received by one tenant in common from sales of water or profits derived from the business of a ditch or mine. Oooilenow v. Ewer, 16 Cal. 461; AM v. Love, 17 Cal. 237. Under this section the right of one tenant in common to recover in an action of ejectment the possession of the entire tract as against all persons but his co-tenants, has been repeatedly held by the Supreme Court. Tovchard v. Crow, 20 Cal. 150; Stark v. Barrett, 15 Cal. 371; Mahoney v. Van Winkle, 21 Cal. 58.3; Ooller v. Fett, 30 Cal. 484. And executors and administrators can maintain such jointly with the other tenants in common in all cases where their testators or intestates could have done so until

the administration of the estates they represent is closed, or the property distributed under decree of the Probate Court. 1581 et seq.; Meeks v. Hahn, 20 Cal. 620; Toucliard v. Keyes, 21 CaL 208; Jie.t/noMs v. Jfottmcr, 45 Cal. 631. If an estate should be sold in lots to different persons, the purchaser could not join in exhibiting one bill against the vendor for specific performance; but where there was a contract to convey with but one person, under which the purchaser conveyed his equitable interest of a moiety to each one of two persons, it was held that "these two persons might sue the original vendor for specific performance. The general rule used to be that unconnected parties may join in bringing a bill in equity, where there is one connected interest among them all, centering in the point in issue in the cause. Owen v. Frink, 24 Cal. 177.

Parties numerous, one suing for all. In March term, 1850, it was held that a suit ought not to be dismissed for defect of parties, where, although the complaint did not expressly allege that it was filed on behalf of the plaintiffs, and all others interested, etc., its scope was to protect the rights not only of the plaintiffs, but also of a numerous class, and from the nature of the enterprise, the condition of the country, and the ever-changing locations of the people engaged in mining, it was, if not utterly impracticable, productive of manifest inconvenience and oppressive delays, to require that all parties should be brought into court. Von Schmidt v. Huntingdon, 1 Cal. 68.

But the Supreme Court have held that this section in the former Practice Act was intended to applv to suits in equity, and not to actions at law. Andrews v. Mokelumne Hill Co., 7 Cal. 333.

In equity the strict rule, that all persons materially interested must be parties, was always dispensed with, where it was impracticable or very inconvenient, as in case of a very numerous association in a joint concern— in effect a partnership. Cockburn v. Thompson, 16 Ves.321; Slo. &/. PI., Sec. 135. Oormanv. RusuM, 14 Cal. 540.

An ex parte order may be made allowing an intervention to be filed. Spanagel v. Reay, 47 Cal. 608.Demurrer, 430. Answer, 437.

388. (656.) When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates;

and the judgment in the action shall bind the joint property of all the associates, in the same manner as if all had been named defendants and had been sued upon their joint liability.

Where the title of the action, as given at the head of the complaint, was Martin Walsh v. M. Walsh et al., composing the Red Star Mining Company, and in the body of the complaint it was stated that "said Red Star Company," omitting the word "Mining," was a mining association, composed of a great number of persons who were so numerous and so much scattered over the country, that plaintiff could not serve them with process without much delay and great expense, and he therefore sued them by the company name, and then the complaint proceeded and set out a cause of action for the recovery of money, and concluded with a prayer for judgment for the amount alleged to owe due and owing against the "Red Star Mining Company, and in his return to the summons, the sheriff certified that he served the same by delivering a copy thereof to M. Walsh, personally, one of the members of the "Red Star Mining Co.," defendant, etc., and the time for answering having expired without any appearance, the clerk entered the default, and immediately thereafter entered a judgment against the "Red Star Mining Co.," without naming Walsh, for the amount sued for, to be enforced against the joint property of the members of the company; the court held in a collateral proceeding that this was substantially within the section, and that there was certainly not an entire absence of averment on the subject, and nothing short of that would justify the court in holding the judgment absolutely void in a collateral proceeding. Moreover it might be doubted whether a question whether the defendants had been sued by the proper name, was anything more than matter in abatement, and to say the least, was analogous to the case of a misnomer, which never rendered the judgment void. If the defendant does not choose to appear and plead matter in abatement, such matter is waived and cannot be assigned for error, if he has been actually served, and much less is a judgment by default against him, though by the wrong name, void. Wtlah v. Kirkpatrick, 30 Cal. 204; Ex parte Kellogg, 6 Vt. 509; Guinard \: Heyfinger, 15 111. 288; Hammond v. The People, 32 111. 446. On the ground that the statute was in derogation of the common law (as to which see 4, ante), the court held it must be strictly construed, and that the record in an action commenced not against the " Independent Tunnel Co.," but against the "Independent Co.," which was certainly a different name, and in which the summons was addressed to the Independent Tunnel Co., failed to

show, in a collateral proceeding, a valid judgment against the Independent Tunnel Co. King v. Randlet, 33 Cal. 321.

(17.) The court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in. And when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment.

Adding parties. A plaintiff who moved on 19th April to add a party defendant, and stipulated on 13th May that the answer should be filed on that day as of 19th April, could not, it was held, be heard to say that the added party was not a party on the last-named day. Lawrence v. Ballou, 50 Cal. 263. An instance where a party should be added is a case where defendants and one Brodie had a claim to a mine, and the possession of land, each holding an equal share, also some sort of an agreement to explore and develop it. A subcontract was then entered into between defendants and plaintiff, by which plaintiff was to devote his skill, time and labor to the enterprise; and in consideration thereof, they were to furnish provisions and coals, and share their interests equally. Brodie had nothing to do with this sub-contract. The court held that if Brodie still had an interest, and an account was to be taken, the association dissolved, and the interests severed as prayed for, Brodie was a necessary party, and might be added. If, however, the plaintiff was content with a judgment establishing his right, and for a conveyance of the interest to which he was entitled, the court saw no reason why he might not waive any relief which required the presence of other parties. Settembre v. Putnam, 30 Cal. 497. Landlord, admitting to defend in ejectment, 379. Adding or striking out the names of parties, 473.

409. (27.) In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, and the object of the action or defense, and a description of the

property in that county affected thereby. From the time of filing such notice for record only, shall a purchaser or incumbrance of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency' against parties designated by their real names. [Approved March 24; effect July 1, 1874.]

Attorney-General, information by. The court considered the attorney-general had power to file an information in the name of the people, and in the nature of a bill in chancery, to annul a patent of lands granted by the State, but the suit was dismissed on other grounds, and the court said the party in interest in such cases might maintain an action in his own name, and thereby could attain to the same end in effect that could be accomplished by a proceeding in the name of the people of the State, upon his relation; and that course better accorded with the system of procedure provided in the State. People v. Straton, 25 Cal. 246-252.

As to the use of the name of the people generally, 367 n., p. 123.

Cloud on title, action to remove, 738, 1050, and notes.

Waiver of tort, and action on implied contract. Plaintiff may waive a tort, and sue on the implied contract created by the facts. Perhaps the better way of stating the proposition is, that plaintiff should allege the exact facts, and if they are such that an implied contract arises upon them, he is entitled to introduce evidence accordingly. Frattv. Clark, 12 Cal. 90; Sheldon v. " Uncle Sam," 18 Cal. 526; Mills v. Barney, 22 Cal. 246.

149. All work performed by the EPA at Iron Mountain has been inconsistent with the NCP. As to whether the EPA can recover costs, or costs in excess of the $2 million, 12-month statutory cap on removal actions. (See 40 C.F.R. § 300.415(b)(5)) We disagree and hold that, considering the unnecessary and wasteful disposal of recyclable hazardous waste materials in an illegal dump, and that the EPA still cannot even meet Clean Water Act limits and the removal action was neither timely or in accordance with the NCP, the EPA should recover nothing.

Violations of RCRA, CERCLA, EPCRA, NCP, CWA, California Toxic Pits Act

1. Violations of the California Health and Safety Code, the California Public Resource Code, the California Water Code, and the California Toxic Pits Recovery Act, the Resource Conservation and Recovery Act, and the National Environmental Policy Act.

ARREST of adverse claimants writ of possession and ejectment, Motion: leave to file quo Warranto

We begin with the language of 42 U.S.C. § 9604(c)(1):

Unless (A) [the EPA] finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, . . . obligations from the Fund . . . shall not continue after $2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

See also 40 C.F.R. § 300.415(b)(5) (limiting actions to $2 million and 12 months "unless the lead agency determines that" one of the exemptions applies). Despite an assertion that the decision to exceed the cap is not subject to arbitrary and capricious review, the fact that the statute allows the EPA to invoke the exemptions when it "finds" certain conditions counsels otherwise. See 5 U.S.C. § 706(2) (courts should set aside agency conclusions and findings where "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). The EPA's determinations in this case that there was an emergency, that the risk to the environment was immediate, and that the assistance would not otherwise be forthcoming are inherently fact-based. The owner had a better plan with an actual remedy, the engineering was significantly more developed than the EPA plan, and the owner was prepared to proceed without EPA financing or assistance. The EPA usurped the owners' authority to implement a remedy and embarked upon a 3000 year removal action.

The EPA determined that the removal action was a remedial action because of the plan to fill the mine with concrete. Although this plan was abandoned, the EPA has never acknowledged that the EPA actions no longer constitute a remedial action. We hold that the EPA "failed to articulate a rational connection between the facts found and the conclusions made." Envtl. Def. Ctr., 344 F.3d at 858 n. 36.

Given these daunting realities and the EPA's careless documentation of its reasons for invoking the emergency and consistency exemptions, we hold that the EPA's decision to exceed the statutory cap was based on the irrelevant factors, there has been a clear error of judgment, and the decision was arbitrary and capricious. See Marsh v. Or. Nat'l Res. Council, 490 U.S. 360, 378, 109 S.Ct. 1851,

104 L.Ed.2d 377 (1989); Envtl. Def. Ctr., 344 F.3d at 858 n. 36. Therefore, the EPA is not entitled to recover any costs of its removal action in Iron Mountain Mines as found by the district court. The EPA plans to put another 2 million tons of sludge in the Brick Flat Pit, and then it will need to build another 25 or more multi-million ton disposal pits somewhere else to store all the sludge it plans to make at Iron Mountain. This sludge is not legal to dispose in the manner EPA allows because it contains toxic levels of cadmium, arsenic, lead, uranium, and other toxic metals, the sludge also forms acid mine drainage itself at a pH of <2. This sludge disposal is not legal because the acid mine drainage that the EPA treats to produce the sludge was being recycled by the mine owner before the EPA declared Iron Mountain Mines a Superfund site, and the technology has always existed to recycle the metals in the acid mine drainage and not make sludge for disposal. The EPA selected remedy is not the best available technology, and the water discharged by the treatment does not meet Clean Water Act standards, which is another negligent endangerment.

FALSE CLAIM OF AUTHORITY OF THE UNITED STATES EPA TO CONDUCT EMERGENCY TIME-CRITICAL REMOVAL ACTION TO GIVE WELFARE TO DOMESTICATED FISH BASED ON LAW PERTAINING ONLY TO HUMAN HEALTH THREAT AND HUMAN HEALTH RELATED ENDANGERMENT.

THE ADMINISTRATIVE RECORD IS REPLEAT WITH EVIDENCE AND ADMISSIONS THAT THERE IS NO HUMAN HEALTH THREAT AT IRON MOUNTAIN MINE, THREAT TO PUBLIC HEALTH OR WELFARE OF THE UNITED STATES IS A FALSE CLAIM.

40 CFR Sec. 300.65(b)(3) requires removal actions to end after either one million dollars has been obligated or six months have elapsed from the date of the initial response. However, 40 CFR Sec. 300.65(i) exempts private party responses from these limitations Because ROD1 was signed before the authorizations of SARA, the removal action is limited to a claim under Sec. 300.65(b)(3).

NCP 300.65 (b)(2)(ii): SEE PAGE 5. (ii) Evaluation by ATSDR or by other sources, for example, state public health agencies, of the threat to public health; **NONE!**

in order for removal action costs to be recoverable under 42 U.S.C. Sec. 9607(a)(4)(B), the action must be consistent with 40 CFR Sec. 300.65. That section of the NCP states that for a removal action, the following be done: 1) a site assessment be performed; 2) an effort be made to involve the

responsible party, if known; 3) an evaluation be made of possible responses, based on the following factors: a) exposure to people; b) contamination of water; c) barrels that pose a threat of release; d) contaminated soil that may migrate; e) weather conditions that may affect the contaminants; f) threat of fire; and g) other factors; 4) the cleanup action begin as soon as possible in an appropriate manner; and 5) contaminated soil and barrels of contaminants be removed, where removal will reduce the spread of contamination and the likelihood of exposure to humans.

DELIBERATE IGNORANCE OF ACTUAL INFORMATION!

This supersedeas by right and appeal stems from the environmental cleanup of Iron Mountain Mine, the largest mine in California, which is within a few miles of the Sacramento River.

With respect to the common law claims for nuisance, trespass, and injury to easement against the Government Defendants, the district court would hold that CAL. CIV. CODE § 3482, which provides that nothing done pursuant to express statutory authorization can be deemed a nuisance, provides a complete defense. Iron Mountain Mines demonstrates that illegitimate animus, malice, and false claims are grounds for piercing the administrative, judicial, and congressional veils.

I. INTRODUCTION

Appellants' Urgent Motion for Stay Pending Appeal authority with citation to the Courts.

II. APPELLANTS SATISFY THE TEST FOR INTERLOCUTORY INJUNCTIVE RELIEF.

A stay pending appeal is a form of preliminary injunction, in which the Court grants interlocutory relief restraining conduct that otherwise might cause irreparable harm before the matter can be resolved on the merits. "To qualify for a preliminary injunction, the moving party must show either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardships tips sharply in the moving party's favor." Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1217 (9th Cir. 1987), citing Sardi's Restaurant Corp. v. Sardi, 755 F.2d 719, 723 (9th Cir. 1985).

"These are not two distinct tests, but rather the opposite ends of a single 'continuum in which the required showing of harm varies inversely with the required showing of meritoriousness.'" Id., quoting San Diego Comm. Against Registration and the Draft v. Governing Board of Grossmont Union High School Dist., 790 F.2d 1471, 1473 n. 3 (9th Cir. 1986). The moving party ordinarily

must show "a significant threat of irreparable injury," although there is "a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases," United States v. Odessa Union Warehouse Co-Op, 833 F.2d 172, 174, 175 (9th Cir. 1987), and vice versa.

A. Appellants Have Demonstrated a Likelihood of Success on the Merits.

Appellants have demonstrated a likelihood of success on the merits, satisfying the first prong of the two-prong test. "[A]n EIS must be prepared if 'substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.'" Ocean Advocates v. U.S. Army Corps of Engineers, 402 F.3d 846, 864 (9th Cir. 2005) (quoting Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1149 (9th Cir. 1998) (alterations and emphasis in original)). Appellants established that they have a high probability of success on the merits, because to trigger the requirement for an EIS, they "need not show that significant effects [on the environment] will in fact occur." Id. At 865 (quoting Idaho Sporting, 137 F.3d at 1150) (emphasis in original).

. Instead, appellants need only raise substantial questions regarding whether the project may have a significant effect. Ocean Advocates, supra, 402 F.3d at 864. As demonstrated by appellants', significant harm to the environment in the event of further or catastrophic failure of the disposal cell. Such a harmful release could occur during an earthquake or other foreseeable occurrences. Therefore an EIS is required.

B. The Balance of Hardships Favors Appellants. Appellants have likewise satisfied the second prong of the twin tests for a preliminary injunction: that serious questions regarding the merits exist and the balance of hardships tips sharply in the moving party's favor. Baby Tam & Co. v. City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998). "Where an EIS is required, allowing a potentially environmentally damaging project to proceed prior to its preparation runs contrary to the very purpose of the statutory requirement." National Parks & Conservation Ass'n. v. Babbitt, 241 F.3d 722, 737-38 (9th Cir. 2001). As the Supreme Court has explained, Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment, satisfying the second test. Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 545 (1987).

III. THE BOND AMOUNT SHOULD NOT EVEN BE NOMINAL.

This Court has held that conservation organizations who seek to prevent environmental harm and enforce environmental laws should not be required to post substantial bonds, lest the courthouse doors be effectively shut to their requests for lawful government decisionmaking. People of the State of California ex rel. Van de Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319, 1325-26 (9th Cir. 1985); Friends of the Earth v. Brinegar, 518 F.2d 322, 323 (9th Cir. 1975); The Wilderness Society v. Tyrrel, 701 F.Supp. 1473, 1492 (E.D. Cal. 1988). Appellants are patentees, grantees, owners, operators, and concerned citizens who lack the economic wherewithal to post a bond. Accordingly, appellants should not be required to post a bond in order to secure enforcement of appellees' duties under the National Environmental Policy Act.

IV. CONCLUSION

For the foregoing reasons, appellants have satisfied both prongs of the two-part test for this Court's issuance of a stay pending appeal. Accordingly, this Court should grant Appellants' Urgent Motion for Stay Pending Appeal. There should not be even a nominal bond.

No Bill of Attainder or ex post facto Law shall be passed.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Congress ... cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations that power can be lawfully exercised.

The U.S. Department of Justice does not enjoy general power(s) of attorney to represent the United States of America State of California. Compare 28 U.S.C. 547(1), (2) (Duties). Willful misrepresentation by officers employed by that Department is actionable under the McDade Act, 28 U.S.C. 530B (Ethical standards for attorneys for the Government).

Whenever the United States proceeds as party plaintiff , an Article III constitutional court, exercising the judicial power of the United States, is a prerequisite under 3:2:1 ("The judicial Power shall extend ... to Controversies to which the United States shall be a Party"). See 28 U.S.C. 1345 (United States as plaintiff).

Whenever the United States proceeds as a party defendant , the sovereign must grant permission to be sued. See 28 U.S.C. 1346 (United States as defendant). In this mode, a legislative court is permitted. See Williams v. United States , 289 U.S. 553, 577 (1933):

... [C]ontroversies to which the United States may by statute be made a party defendant, at least as a general rule, lie wholly outside the scope of the judicial power vested by article 3 in the constitutional courts. See United States v. Texas , 143 U.S. 621, 645, 646 S., 12 S.Ct. 488.

A private Citizen may move a federal court on behalf of the United States ex relatione . United States ex rel. Toth v. Quarles , 350 U.S. 11 (1955).

The federal statute at 18 U.S.C. 3231 confers original jurisdiction on the several district courts of the United States ("DCUS"). These courts are Article III constitutional courts proceeding in judicial mode. Sherman Act, 26 Stat. 209 (1890), 36 Stat. 1167 (1911), 62 Stat. 909 (1948). See also Mookini v. U.S. , 303 U.S. 201, 205 (1938) (term DCUS in its historic and proper sense); Agency Holding Corp. v. Malley-Duff & Associates , 107 S.Ct. 2759, 483 U.S. 143, 151 (1987) (RICO statutes bring to bear the pressure of private attorneys general on a serious national problem for which public prosecutorial resources are deemed inadequate).

The United States District Courts ("USDC") are legislative courts typically proceeding in legislative mode. See American Insurance v. 356 Bales of Cotton , 1 Pet. 511, 7 L.Ed. 242 (1828) (C.J. Marshall's seminal ruling); and Balzac v. Porto Rico , 258 U.S. 298, 312 (1922) (The USDC is not a true United States court established under Article III .) See 28 U.S.C. §§ 88, 91, 132, 152, 171, 251, 458, 461, 1367.

Legislative courts are not required to exercise the Article III guarantees required of constitutional courts. See Keller v. Potomac Electric Power Co. , 261 U.S. 428 (1923); Federal Trade Commission v. Klesner , 274 U.S. 145 (1927); Swift v. United States , 276 U.S. 311 (1928); Ex parte Bakelite Corporation , 279 U.S. 438 (1929); Federal Radio Commission v. General Electric Co. , 281 U.S. 464 (1930); Claiborne-Annapolis Ferry Co. v. United States , 285 U.S. 382 (1932); O'Donoghue v. United States , 289 U.S. 516 (1933); Glidden Co. v. Zdanok , 370 U.S. 530 (1962); Northern Pipeline Co. v. Marathon Pipe Line Co. , 458 U.S. 50 (1982); 49 Stat. 1921.

All guarantees of the U.S. Constitution were expressly extended into the District of Columbia in 1871, and into all federal Territories in 1873. See 16 Stat. 419, 426, Sec. 34; 18 Stat. 325, 333, Sec. 1891, respectively. Hooven & Allison v. Evatt , 324 U.S. 652 (1945) (only as Congress has made those guaranties [sic] applicable).

REMEDY DEMANDED

All premises having been duly considered, Relator now moves this honorable Court, on behalf of the United States:

(1) to certify to the Office of the Attorney General that the constitutionality of CERCLA, the Act of Dec. 11, 1980, (42 U.S.C. 9601 et seq.) and amendments has been drawn into question; and,

(2) to certify Movant's intervention for presentation of all evidence admissible in the above entitled cases, and for argument(s) on the question of the constitutionality of said Act.

INTERLOCUTORY APPEAL FOR DECLARATORY AND INJUNCTIVE RELIEF

Direct the Superior Court and the Eastern District Court to void and vacate the liens. Enjoin EPA

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

WRIT OF EQUITABLE *ESTOPPEL*! WRIT OF POSSESSION & EJECTMENT!

JUDGEMENT OF THE COURTS ENJOINED, VACATED, AND SET ASIDE

February 4, 2010 Signature: John F. Hutchens

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

Verification affidavit:

I, John F. Hutchens, hereby state that the same is true of my own knowledge, except as to matters which are herein stated on my own information or belief, and as to those matters, I believe them to be true. Affirmed this day: February 4, 2010

Signature: John F. Hutchens

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

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

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

UNITED STATES DISTRICT COURT EASTERN DISTRICT of CALIFORNIA

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

IRON MOUNTAIN MINES, INC. &) **Civil No.** 2 10 - CV - 0232 FCD KJM
T.W. ARMAN, DEFENDANTS) **HONORABLE JUDGE: JOHN A. MENDEZ**
v.) **NOTICE: APPEARANCE DE BENE ESSE**
UNITED STATES OF AMERICA) **COMPLAINT IN INTERVENTION & FOR**
PLAINTIFFS) **LEAVE TO FILE QUO WARRANTO:**
IRON MOUNTAIN MINES, INC. &)**QUANTUM DAMNIFICATUS; QUANTUM**
T.W. ARMAN, DEFENDANTS)**MERUIT; QUANTUM VALEBAT, QUARE**
v.)**IMPEDIT; NAME CLEARING HEARING!**
CALIFORNIA) **FLAT CREEK MINING DISTRICT PRIOR**
PLAINTIFFS)**RIGHT LAW OF THE APEX, THE ARMAN**
JOINT AND SEVERAL TRESPASSERS!)**AND HUTCHENS CONSOLIDATED CLAIM,**
VIOLATIONS: §§ 1983, 1985, 1986.) **i.e. IRON MOUNTAIN MINES, INC. ET AL**
§ 241, § 242, § 245, § 3729. §§15 §1110b) **FREEHOLD ESTATE WRIT OF ENTRY,**
CONSTITUTIONAL CIVIL RIGHTS §905) **WRIT OF RIGHT, WRIT OF POSSESSION.**
CERTIORARIFIED MANDAMUS §1257) **INNOCENT LANDOWNER DEFENSES**
NEGLIGENCE §803 FALSE CLAIMS) **TAKING REQUIRING COMPENSATION**
§706 §2201 §2403 § 2409a §2410 §2680) **UNLAWFUL DETAINER, QUIET TITLE.**

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: Michele L. Petti, po box 182, Canyon, Ca. 94516
On the date entered below, I caused to be served on the United States Attorney General:

INTERVENTION COMPLAINT & CITIZENS' ARREST OF JUDICIAL TAKING

SUPERSEDEAS BY RIGHT PETITION FOR STAY PENDING APPEAL RULE

INTERLOCUTORY APPEAL IN THE UNITED STATES OF AMERICA

COURT OF APPEALS FOR THE NINTH CIRCUIT

CITIZENS OF THE UNITED STATES OF AMERICA STATE OF CALIFORNIA,

EX REL. ARMAN & HUTCHENS, AKA: TWO MINERS & 8000 ACRES OF LAND,

T.W. ARMAN and JOHN F. HUTCHENS, IRON MOUNTAIN MINES, INC. ET AL

Grantees, Patentees; Owner & Operator.

v.

USDC-CES respondent & DEFENDANT

UNITED STATES OF AMERICA STATE OF CALIFORNIA; Grantors
WRONGFUL TAKING UNDER A FALSE PRETENSE OF OFFICIAL RIGHT

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:.

For the United States of America State of California
c/o EPA, et al, Nancy Marvel & Kathleen Salyer
Office of the Regional Counsel; Superfund/CERCLA
75 Hawthorne St. San Francisco, Ca. 94105

For T.W. Arman and IMMI
William Logan, Logan & Giles
2175 North California Blvd.
Walnut Creek, Ca. 94596

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: February 8, 2010 Signature: Michele L Petti

/s/ Michele L. Petti