El Dorado County Supervisors Meeting
10/06/2009

Item:

Supervisor Nutting recommending adoption of Resolution urging the California State Legislature and Governor Arnold Schwarzenegger to Rescind or amend SB670, a ban on suction dredging.

Submitted by
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ACT of JULY 26, 1866
H. B. 365
Commonly known as The Mineral Estate Grant of 1866

I have attached the full text of H.R. 365 as exhibit 1.

This bill was implemented as an act of the Congress of The United States and enacted as a legislative bill that bears the United States House number **H. R. 365.**

It has never been repealed and the only amendment to it is the mining law of 1872, which is simply an amendment to clarify details and definitions of the original grant of 1866. Every piece of legislation, regulation, or rule that has been implemented by any government agency contains a “saving clause” that acknowledges that H.B. 365 is the supreme law of the land, with regard to mineral resources held in “trust” by the federal government for its citizens.

The 1866 enactment is Law. But it is a law granting property in the public domain. That property can not be taken back.

The act of 1866 is NOT policy legislation which subsequent legislation could change because the 1866 conveyed property, all valuable mineral deposits to "citizens of the United States". The "*interpretation of legislative grants are so well settled that they hardly need be reasserted*" requiring that the grantor can not reassert any right upon a grant of property to affect it in any way contrary to the grant.

For a number of reasons no agency of the government can affect the property conveyed in the grant. Agency is called agency because it is an agent, not a principal that can make any decisions not delegated. It may be easier to understand that because Congress disposed of all valuable mineral deposits, gave them away, every subsequent land disposal legislation must have a savings clause, saving from affect the land conveyed, disposed in 1866, even in FLPMA. So even if subsequent legislation could change prior legislation, every subsequent legislation covering this

subject matter must “save” the property Congress gave away, that it could not be affected by any body. 43 USC 1701 (3) explains that **lands not designated prior to a specific use** is under FLPMA. That is the “savings clause” preserving the conveyed property showing the land specifically disposed, or used, is NOT to come under FLPMA. That savings condition is expressed again in 43 USC 1732, the management authority in a number of places.

Forest Service has absolutely NO direct authority over mineral lands, period. BLM has limited continuing “authority” which is really more an obligation consistent with the grant of 1866 and no more. No MOU, can, in any way, adversely affect the property conveyed, no longer in possession of the United States. If there is interference in any way, those are an unlawful takings of the private property granted in the Act of 1866.

There are state statutes, but those must conform to the "laws of the United States". The 1866 act is a law of the United States and congressional land disposal act and no state or agency can interfere or act in violation of it.

This legislation (H.R. 365) has been relatively unknown by the mining community and purposely obscured by language deception by government agencies. Mining rights researchers have recently found and brought this Mineral Estate Grant out into the light of day and are actively working to show both authorities and miners the immense power that is vested in every citizen, with regard to their rights under existing federal law.

What follows in this document is excerpted from this law and comments pertinent to the understanding of it, with regard to miners mining claims as “real property” that cannot be denied access, regulated, or legislated against without invoking the “Supremacy Clause” of the U.S. Constitution.

Section 1.

3 That the mineral lands of the public domain, both surveyed
4 and unsurveyed, are hereby declared to be free and open to
5 exploration and occupation by all citizens of the United
6 States.

Comment:
Do not be fooled, the congressional granted right of access on the **public domain** is not a BLM easement, or Forest Service “route” over public land.

Public domain is a term used to describe lands that are not under private or state ownership. Our citizens do have a right of remedy in all of this, administrative obstruction of a granted right is subject to civil and criminal liability. Make no mistake; **S.B. 670 is an obstruction of a granted right.**

California bill SB 670 denies miners their constitional right to mine their claims, which are private property. Even California’s constitution clearly states, "Private property may be taken or damaged for public use only when just compensation ... has first been paid to, or into court for, the owner." (Cal. Const., art. I, § 19.) Mineral rights are ownership in land, and therefore miners are landowners.

1 **SEC. 8.** ***And be it further enacted,*** That the right of
2 way for the construction of highways over public lands, not
3 reserved for public uses, is hereby granted.

Comment:
The actions of agencies such as the Forest Service and BLM are in direct conflict with the granted rights of our citizens to not only construct roads for access over public lands, but by closure rules, such as, the forest service travel management plan, the agencies deny lawful access to the land, as well as denying lawful access of miners to mineral lands, which are private property.

Section 1 and generally section 8 declare the property vesting as of the date of the legislative grant, in this case 1866, upon acceptance.

This following is but one evidence that this grant of property, available to everyone today, is not subject to administrative interference or obstruction, whether by license, permit, other form permission, closure, or by criminal citation; the extortive utilization of which is criminal and a plain error and failure of duty for any judge to disregard.

A granted right prevails any administrative authority. This is plainly evidenced in the recent "Hicks case". Referenced here:

United States Court of Appeals, Ninth Circuit.
UNITED States of America, Plaintiff-Appellee,
v.
Steve A. **HICKS**, Defendant-Appellant.
No. 01-30146.
D.C. No. CR-00-00001-DWM.

Argued and Submitted Nov. 5, 2002.
Decided Nov. 14, 2002.

In this case the Ninth Circuit said, **"Corporate employee was convicted in the United States District Court for the District of Montana, Donald W. Molloy, Chief Judge, of operating motorcycle in area of National Forest closed to motor vehicles by Forest Service closure order, and he appealed. The Court of Appeals held that employee of corporation that owned subsurface mineral rights in national forest was not subject to Forest Service closure order that exempted landowners.**

"Both Lower Courts Committed a Plain Error by Determining the Landowner Exemption Did Not Apply To Hicks.
Because the trial courts did not recognize mineral rights as ownership in land, and because this error adversely affected Hick's entitlement to the landowner exemption, we exercise our discretion to correct this plain error.
REVERSED AND REMANDED WITH AN INSTRUCTION TO ENTER A JUDGMENT OF NOT GUILTY."
C.A.9 (Mont.),2002.
U.S. v. Hicks
50 Fed.Appx. 867, 2002 WL 31553938 (C.A.9 (Mont.))