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Fw: SB 670, THANK YOU FOR ANY EFFORT TOWARDS THE REPEAL OF SB 670
The BOSTWO to: Kathryn L Tyler 10/05/2009 04:59 PM
Sent by: Kitty J. Miller
Cc: raynutting

Dredging...
----- Forwarded by Kitty J. Miller/PV/EDC on 10/05/2009 04:58 PM -----

Customer Service
<filterstone@gmail.com>
10/02/2009 09:54 PM

To bostwo@co.el-dorado.ca.us
cc
Subject RE: SB 670, THANK YOU FOR ANY EFFORT TOWARDS THE REPEAL OF SB 670



**Please take a moment to read this.**
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**California politicians blunder**

**It is absolutely established that a valid unpatented placer mining claim is in fact a Statutory Federal Grant of "private property" derived from 30 U.S.C. § 21-54. All unpatented placer mining claims situated in California are on federally owned lands, under jurisdiction of the USFS, or BLM. Otherwise none would exist, as federal land is the only place an unpatented mining claim can be initiated, and held.**

**As long as the Federal government retains title, the federal interest in providing free access to its own land in order to promote mining is sufficient to preempt any state law that fundamentally bans such use. Thus under standard preemption analysis any state legislation, or regulation that conflicts with this overriding federal purpose, must fail.**

**Under the Supremacy Clause, any state law that conflicts with a federal law is preempted. Gibbons v. Ogden, 22 U.S. 1 (1824). Any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause" regardless of the underlying purpose of its enactors, Perez v. Campbell, 402 U.S. 637, 651-52, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971)**

**A conflict exists if a party cannot comply with both state law and**

**federal law. In addition, even in the absence of a direct conflict between state and federal law, a conflict exists if the state law is an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372-73 (2000).**

**In determining whether a state law is a sufficient obstacle, the courts examine the federal statute as a whole and identify its purpose and intended effects and then determine the impact of the challenged law on congressional intent. State law can be pre-empted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is pre-empted.**

**If Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 581 (1987)**

**An 1998 8th Circuit Court of Appeals case revolving around near identical prohibitions on unpatented mining claims, wherein holders brought suit claiming that federal mining laws preempted ordinance prohibiting issuance of any new or amended permits for surface metal mining within area which included federal lands. Private landowner intervened to defend the ordinance.**

**The United States District Court for the District of South Dakota, Richard H. Battey, Chief Judge, 977 F.Supp. 1396, granted summary judgment for plaintiffs and enjoined the ordinance. Intervener appealed.**

**The Court of Appeals, Hansen, Circuit Judge, held that: (1) preemption claim was ripe, and (2) Federal Mining Act preempted ordinance. Affirmed; South Dakota Mining Association Inc v. Lawrence County, 155 F.3d 1005**

**The only locatable mineral on the majority of unpatented placer claims held under federal law is placer gold. Which is naturally concentrated in stream or river bed gravels, and usualy no where else in worthwhile amounts. The only economically viable means to profitably recover placer gold in stream or river gravel is by "suction dredging".**

**Accordingly, suction dredging is the "Highest & Best Use" of placer mining claims.**
**As a matter of fact, it is only viable use, as no other mining method is practical, economical, or profitable.**

**When the only viable use of an unpatented placer mining claim is by suction dredging, arbitrarily prohibiting that use (even temporarily) effects a complete "taking" of all economic benefit the owner could derive from it, for the duration of the ban.**

**The Fifth Amendment to the United States Constitution, made applicable to state and local governments by the Fourteenth Amendment, prohibits the government from taking private property for public use without just compensation.**

**The California Constitution provides, "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.)**

**It is well established that just compensation... is the full value of the property taken at the time of the taking, plus interest from the date of taking. United States v. Blankinship, 9 Cir., 1976, 543 F.2d 1272, 1275.**

**Without doubt, S.B. 670 capriciously deprives thousands of families of their legitimate livelihood, and caused an immediate gross compensatory "taking" of valid existing rights, and compensable private property interests of considerable magnitude.**

**Neither the USFS, or BLM will enforce this state law, given that that federal statutes, and regulations preempt this suction dredging ban on unpatented placer mining claims situated on federal lands under their control in California. That clearly should give public notice the federal**

**courts will most certainly, and quickly take the same position the USFS/BLM has.**

**The Treasury of the State of California will ultimately be held liable to pay compensable damages to all those effected, accruing from August 6th 2009 forward. Until at least the illegal ban on suction dredging unpatented placer mining claims is lifted, or if necessary overturned by appropriate federal court action.**

**Plainly, Senator Wiggins who introduced this Bill, all the legislature that voted for it, and even the Governor failed to have S.B. 670 analyzed for critical federal preemption flaws, or significant "takings" liabilities it would create.**

**It would seen astute on the part of the California legislature to limit state financial liabilities here by swiftly correcting this law, to effect only a suction dredging ban on fee simple lands in California, which federal law may not preempt.**

**If not corrected quickly, state coffers will needlessly expend precious funds in paying attorney fees, and costs attempting to delay the inevitable overruling of S.B. 670 illegal provisions in federal court. Involved compensatory damages could well approach $6,000,000 annually. If ignored, those applicable damages will certainly compound over time with interest, costs and attorney fees applied.**

**California politicians should ponder that the 3,200 other current California suction dredge permit holders, and approximately 21,000 other similarly situated owners of unpatented placer mining claims on federal lands in California will justifiably require compensation for their loss's S.B 670 directly caused them.**

**Once all affected are joined in a class action, which will most certainly prevail.**
**Who do these politicians think will be billed for that compensation? Without question, it will most certainly be the treasury of the state of California.**

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**"Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) Federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto." (See 30 U.S.C. § 21-54, 43 C.F.R. § 3809.3-3, 0-6).**

**Federal mining claims are "private property" Freese v. United States, 639 F.2d 754, 757, 226 Ct.Cl. 252 cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed.2d 103 (1981); Oil Shale Corp. v. Morton, 370 F.Supp. 108, 124 (D.Colo. 1973).**

**This possessory interest entitles the claimant to "the right to extract all minerals from the claim without paying royalties to the United States." Swanson v. Babbitt, 3 F.3d 1348, 1350 (9th Cir. 19930).**

**16 U.S.C. § 481, Use of Waters: All waters within boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes under the laws of the state wherein such national forests are situated or under the laws of the United States and the rules and regulations established thereunder.**

**"Uncompensated divestment" of a valid unpatented mining claim would violate the Constitution. Freese v. United States, 639 F.2d 754, 757, 226 Ct.Cl. 252, cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed. 2d 103 (1981).**

**Even though title to the fee estate remains in the United States, these unpatented mining claims are themselves property protected by the Fifth Amendment against uncompensated takings. See Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); cf. Forbes v. Gracey, 94 U.S. 762, 766 (1876); U.S.C.A.Const. Amend. 5; North American Transportation & Trading Co. v. U.S., 1918, 53 Ct.Cl. 424, affirmed 40 S.Ct. 518, 253 U.S. 330; United States v. Locke, 471 U.S. 84, 107, 105 S.Ct. 1785, 1799, 85 L.Ed. 2d 64 (1985); Freese v. United States, 639 F.2d 754, 757, 226 Ct.Cl. 252, cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed. 2d 103 (1981); Rybachek v. United States, 23 Cl.Ct. 222**
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**(1991).**

**A valid location, though unpatented, is a grant in the nature of an estate in fee and if such an estate is taken by the United States, just compensation must be made. See U.S.C.A. Const. Amend. 5, North American Transportation & Trading Co. v. U.S., 1918, 53 Ct.Cl. 424, affirmed 40 S.Ct. 518, 253 U.S. 330**

**Such an interest may be asserted against the United States as well as against third parties (see Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963); Gwillim v. Donnellan, 115 U.S. 45, 50 (1885)) and may not be taken from the claimant by the United States without due compensation. See United States v. North American Transportation & Trading Co., 253 U.S. 330 (1920); cf. Best v. Humboldt Placer Mining Co.**

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**Ignorance of the Law excuses no one**
**Especially, California lawmakers**

**The California Legislature in passing SB 670. A law which illegally prohibits all gold mining by small scale suction dredging state wide for an indefinite period of time. Displays a perfect example of disregard for the Rule of Law by the California state legislature.**

**It is at best sad, if not horrific private citizens have to remind elected officials the U.S. Constitution mandates that "no private property shall be taken for public use without just compensation. Likewise, the Constitution of California mandates the state is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.**

**That a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws; and Private property may only be taken or damaged for a public use when just compensation, has first been paid to the owner.**

**California was admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned;**

**And that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States,**
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**without any tax, impost, or duty therefore.**

**Indisputably, under both federal, and state law, a valid unpatented placer mining claim is in fact "private property", granting the owner the right to mine it, and profit from the flow of income derived from doing so.**

**No one disputes, the state has the right to reasonably regulate suction dredge mining to protect the environment. However, under federal law prospecting, locating and developing mineral resources on federal lands, which comprise 45% of California may not be prohibited nor so unreasonably circumscribed as to amount to a total prohibition.**

**Plainly, suction dredging is the only practical, economical and environmentally sound gold mining method available to citizens of ordinary means, who own placer mining claims. There is no other viable method to mine placer gold concentrated on or near bedrock in river, or stream gravels.**

**Clearly, taking an Oath of Office, that they will support the Constitution of the United States, and the Constitution of the state of California, to faithfully discharge those duties elected state officials are obligated to know the very foundation of the Rule of Law, and facts of any matter they are to govern.**

**The facts here are straight forward. The major impetus behind SB 670 is supposedly to protect water quality, and the spawning grounds of threatened or endangered Salmon & Steelhead runs in California.**

**Fact: The exterior boundaries of salmon / steelhead watersheds cover a total of only about 1/3 of the state of California. Precise maps of applicable waterways show them to be less than 8% of the state.**

**2/3rds of California contain no salmon / steelhead habitat. Obviously, no protection is necessary, where no salmon habitat exists. <u>Yet illogically the SB 670 suction dredge ban is statewide</u>.**

**Fact; There are 64,438 miles of rivers, and 124,615 miles of streams, totaling 211,513 miles of waterways in California.**

**If the 3,200 suction dredge permit holders were to operate simultaneously, there would only be one single suction dredge operating per 70 miles of existing California waterways. If half that number were operating simultaneously, there would only be one single suction dredge operating per 140 miles of waterways. Given that fact, suction dredging has so small an impact, it cannot be more than negligible.**

**Fact: Massive unrestricted hydraulic mining began in California circa 1853 and ended in 1884. Bucket line dredge mining began in California circa 1890, diminished during WW2 and ended about 1960.**

**The combined effects of those antiquated gold mining methods was to wash about two billion tons of silt, sediment, & tailings, as well as approximately 5 million lbs of mercury into California streams, and rivers that are salmon / steelhead habitat.**

**Certainly, those mammoth sized gold mining methods had a wide range of devastating effects on water quality & salmon habitat environment. Even so, California salmon, steelhead & trout populations remained relatively stable throughout that 80 year span of time.**

**Given that fact, plainly, the effects of modern day small scale suction dredging are so infinitesimally small, they are realistically of no practical consequence on water quality & fish habitat.**

**Fact: Proponents argue suction dredging stirs up & disperses mercury lost in California waterways from historic gold mining methods.**

**Reality: The argument is totally without merit, as modern day suction dredges catch, recover and remove 98% of mercury passing through them. Which is beneficial to the environment, rather that adverse to it.**

**Fact: SB 670 mandates a state wide study of suction dredging effects, costing tax payers $1.5 million dollars.**

**Reality: Dozens of peer reviewed authoritative scientific studies of small scale suction dredging performed by numerous federal, state agencies, and universities exist already. All those study reports clearly show suction dredging has only a fleeting negligible effect on water quality & fish habitat.**

**Given the massive amount of credible scientific information & reports that already exist on the subject. Any competent agency could simply compile those reports, then draw reasonable unbiased conclusions from them, rather that duplicate identical studies at great cost to the tax payer.**

**Fact: Pre SB 670 DF&G regulations prohibit suction dredging in rivers, or stream area's during times when critical life events of salmon occur.**

**Reality: Because suction dredging was already prohibited in areas & at times where critical salmon life events occur. Suction dredging cannot have any more than negligible impact on salmon spawning habitat, as no suction dredging takes place during those events.**

**Fact: Fiscal Effect: According to the Senate Appropriations Committee, SB 670 has negligible state costs.**

**The truth: According to a recent study the fiscal effects of SB 670 will cause economic loss**

**between $60 to $100 million dollars annually. Primarily forced on individuals, mining claim owners, small business entities, and suction dredge manufactures.**

**Fact: SB 670 is said to impose a temporary 2 year ban on suction dredging.**

**Reality: DF&G was previously court ordered to complete a suction dredge study, and failed to do so. Given that history, DF&G may take years, a decade, or possibly never complete the SB 670 study. As such, for all practical purposes the SB 670 suction dredge ban is indefinite.**

**Fact: SB 670 was passed as an "urgency" measure, to take effect immediately, based on "findings" by the legislator that suction dredging results in various adverse environmental impacts on protected species of fish.**

**Reality: CF&G previous study shows only fleeting negligible adverse impact, and their own existing regulations minimize all potential impact by prohibiting suction dredging in places, and times where critical life events of salmon occur.**

**Moreover, the legislature continues to ignore dozens of credible studies that clearly show small scale suction dredging has only a fleeting, and negligible impact on water quality, and fisheries. No environmental emergency exists, but the California legislature arbitrarily declares one here, to imposed an illegal law immediatly.**

**Fact: Astute legislators always submit proposed laws to the state attorney generals office for a legal opinion whether the new law will cause, or create compensable takings of private property, create financial liabilities to the state, and/or could the proposed law be preempted by overriding federal law. Resulting in federal court challenges from affected damaged parties, that cannot be well defended, nor won.**

**Reality: The California legislature apparently did not ask the state attorney generals office for any legal opinion regarding the effects of SB 670. Thus, the legislature proceeded blindly, without full knowledge of the legal facts, consequences, ramifications or possible damages of their actions.**

**Fact: Unquestionably, massive water diversions to irrigate California's agricultural crops, hydroelectric dams to power all of California's electrical needs, agricultural pollutants, industrial pollutants, logging effects, over fishing, aversive ocean conditions, are obviously the primary cause of salmon population declines.**

**Those California water, and fish habitat pollution issues are so huge, the truth is California legislature can do little to abate them, without shutting down the very infrastructure of the state.**

**Instead of tackling the real pollution issues affecting water quality, and fish habitat. California politicians chose to attack, and unjustly prohibit small scale suction dredging,**

**who's overall impact is so small, it is of no realistic consequence.**

**The reality here is that proponents of SB 670 used a progressive smear campaign disseminating volumes of misinformation, disinformation, distorted Nazi style propaganda, and outright lies in the hope of fostering the political view that suction dredge gold mining by a relatively tiny group of individuals in California is a major cause of water quality pollution, causing the decline of local salmon populations.**

**Ponder for a moment, near 3 million California fishermen, casually kill fish as leisure sport. California's commercial fishermen kill fish for profit. Various California Indian tribes, some with, and some without federally protected rights to harvest fish with dip nets kill massive numbers of salmon every year. These are the very groups that supported SB 670. To anyone with common sense, the hypocrisy in that is astounding.**

**California fishermen themselves annually cast out, and lose more than 100 tons of lead, innumerable metal swivels, millions of steel hooks, and immeasurable lengths of monofilament plastic fishing line into waterways.**

**Then, have the gall to point fingers, loudly proclaiming suction dredging harms water quality, and is causing the decline of salmon populations. When, in fact there is no credible evidence, suction dredging has ever harmed, or killed a single salmon.**

**Ponder for another moment, the combined pollution caused by all motorized boating in California exceeds many million fold any possible adverse effect small scale suction dredging has on waterways with California. Yet, California politicians would never ban recreation boating within the same waterways suction dredgers dredge in.**

**Apparently the California politicians who voted for passage of SB 670 are so blind, so gullible, so easy to fool they did not even take the time, or make the effort to determine what the truth, and facts of this matter, they themselves then vote on.**

**Plainly, It is impossible to make a fair, honest, unbiased judgment, or decision in any matter, without full knowledge of the true facts of any matter before you. Making any uniformed judgment is against the very oath of office they swore to uphold, and is in complete distain of the fiduciary duty every legislator has to govern fairly. To do otherwise, is negligent malfeasance.**

**SB 670 has caused, and will continue to cause tens of millions of dollars in gross economic loss annually to depressed rural areas of California. SB 670 illegally deprives 3,200 suction dredge permit holders, about 21,000 placer mining claim owners the right to mine gold they own, in the most viable, efficient, profitable, and environmentally friendly manner possible.**

**Sadly, California politicians in passing an illegal statewide prohibition on suction dredge mining, have forced those damaged to file a federal court action, to protect their mining**

**rights, and to recover damages this irreconcilable law caused.**

**Anyone cognizant of the law, as previously decided in cases like California Coastal Commission et al., v. Granite Rock Co., 480 U.S. 572, 592, 107 S.Ct.1419, 1425 (1987). Which determined....."State and local regulations which render a mine commercially impracticable cannot be enforced".**

**Or another similar case, where mining on federally protected unpatented claims was prohibited, the court found, (1) preemption claim was ripe, and (2) Federal Mining Act preempted ordinance. Affirmed; South Dakota Mining Association Inc v. Lawrence County, 155 F.3d 1005**

**Given the law, the irrefutable fact that federal law preempts conflicting state law, and clear legal precedents already established. There is no doubt, this suction dredge mining ban will be flatly rejected, as plainly preempted by overriding federal law. The only issue left, would be to decide who is entitled to damages, and the amount.**

**The truly sad thing here, is all the pain, suffering, harm, depravation, loss and damage forced on a small minority, intentionally caused by California politicians willfully passing a law that clearly will not withstand a federal court challenge. For shame, as they are obligated to know better.**

**Gold mining is as quintessential to California, as a fish is to water. To illegally ban the right of a prospector, to mine what he struggled so hard to find, claimed, developed, owns, pays property tax on, and invested all he could, that he might profit from any gold he works so hard to recover, is abhorrent to any free mans sense of justice.**

**Apparently, California politicians lack such understanding, even though a clear reminder is often worn on their own finger, in the form of a gold wedding ring. The gold in it, may well have been mined in California, by a prospector. That same small minority group they have now unfairly disenfranchised, with the passage of SB 670.**

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CALIFORNIA ADMISSION TO Union
Act for the Admission of California Into the Union
Volume 9
Statutes at Large
Page 452
Whereas, the people of California have presented a constitution and asked admission into the Union, which constitution was submitted to Congress by the President of the United States, by message date February thirteenth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government:

Be it enacted by the Senate and House of Representatives of the United States of America in
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Congress Assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Sec. 2. And be it further enacted, That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

**Sec. 3. And be it further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned;**

and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents;

**and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor.**

Provided, That nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.
Approved, September 9, 1850.

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**THE LAWSUIT AGAINST SB 670**

http://www.courthousenews.com/2009/09/16/SuctionMining.pdf

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