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11-21-2009, 06:26 PM #1

jerhobbs
PLP President

Join Date: Feb 2007
Posts: 293

DFG Commnents Sacramento

These are the Comments and constuctive Notice given the the Ca. Fish and Game at the Sacramento meeting on Nov. 17 2009

Public lands for the People inc.
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Mark Stopher Nov. 17, 2009
California Department of Fish and Game
601 Locust
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Constructive Notice and Comment
(On California Department of Fish and Game (DFG) Notice of Preparation (NOP) for Suction Dredge Mining and Rule Making Process)

Public Lands for the People Inc. (PLP) and I appreciate the opportunity to participate in the rule making process for suction dredge mining in the state of California.

The purpose of our comments is to inform the DFG that in the process of doing their Environmental Impact Study (EIR) to promulgate Suction Dredge Regulations for the State of California, DFG should seriously consider retaining an expert on Mining laws.

In the 1994 the DFG did not consider the ramifications of running afoul to the mining laws, the Constitutional protections, other applicable federal laws or the case law decisions on the

rights of miners and mining claimants. If the DFG continues to ignore these laws in this present rule making process there will be serious ramifications in a court of law.

We notice that the California Department of Fish and Game (DFG) in several places refer to the suction dredge community as recreational. Where ever the DFG gets such language from will most likely create a great problem down the line for them. There is no such creature, either in state law or federal law which creates a recreational suction dredger, prospector or miner and can only serve to take a miner out from under the protection of the rights granted under the mining law.

Recreation is a privilege in most cases and mining is a property right, a grant of land under the federal mining laws of 1866 and 1872. (30 USC 22 – 54). For the DFG to treat miners, prospectors or mining claim owners, (Mineral Estate Grantees) with the same disrespect as given to the recreational activities will certainly exceed DFG's regulatory authority.

Also it would appear that DFG believes they have discretion to regulate suction dredge mining to the point of prohibition. Case Law says that they can not prohibit prospecting or mining either temporarily or permanently.

In the Department of Fish and Game Notice of Preparation Document (DFG NOP) on page 21, last paragraph and I quote, "In other words, the issuance of individual suction dredge mining permits consistent with regulations adopted by the Department under Fish and game Code section 5653.9 is an important aspect of the discretionary project being analyzed in the SEIR that the Department proposes to carry out and approve for the purposes of CEQA."

In the Department of Fish and Game Notice of Preparation Document (DFG of NOP) on page 25, part 7.5, Final SEIR and Proposed Regulations, and I quote, "The final SEIR, in turn inform the Department's exercise of discretion as a lead agency under CEQA in deciding whether to approve a the Proposed Program as prescribed by the Fish and Game Code."

The DFG does not have discretion under CEQA or NEPA or any other state or federal law to prohibit suction dredge mining, temporarily or permanently, mining is not discretionary.

Definition of Discretionary Blacks Law Dictionary 9th Edition
(of an act or Duty) "involving an exercise of judgment and choice, not an implementation of hard-and-fast rule."

This language does not entertain the rights under the mining law but does offer an opportunity for the DFG to fall in an act of abuse of discretion.

Suction Dredge Mining nor any other form of modern day mining is discretionary and in the case of California's CEQA suction dredge mining is a ministerial action and can not be classified as discretionary. (CEQ Guidelines 15260 – 15285)

Definition of Ministerial Blacks Law Dictionary 9th Edition
"Of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill..."

Discretionary is a Violation of Public Resources Code
Section 21080-21098
21080. " (a) Except as otherwise provided in this division, this
division shall apply to discretionary projects proposed to be carried
out or approved by public agencies,

State law under CEQA also is defined as to only apply to discretionary projects as quoted from section 21080 of the Public Resource code:

Discretionary is a violation of CALIFORNIA CODES
PUBLIC RESOURCES CODE
SECTION 21080-21098
21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies..."

The Federal code states at 50 CFR § 402.03 (Applicability)
"Section 7 and the requirements of this Part apply to all actions in which there is discretionary Federal involvement or control."

The U.S. Supreme Court in 2007 clarified the meaning of "discretionary agency action" in Home Builders v. Defenders of Wildlife 127 S.Ct. 2518 at 2534 where they stated:
" Agency discretion presumes that an agency can exercise "judgment" in connection with a particular action. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415-416, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971); see also Random House Dictionary of the English Language 411 (unabridged ed.1967) ("discretion" defined as "the power or right to decide or act according to one's own judgment; freedom of judgment or choice"). As the mandatory language of § 402(b) itself illustrates, not every action authorized, funded, or carried out by a federal agency is a product of that agency's exercise of discretion.

This history of the regulation also supports the reading to which we defer today. As the dissent itself points out, the proposed version of § 402.03 initially stated that "Section 7 and the requirements of this Part apply to all actions in which there is Federal involvement or control,"48 Fed.Reg. 29999 (1983) (emphasis added); the Secretary of the Interior modified this language to provide (as adopted in the Final Rule now at issue) that the statutory requirements apply to "all actions in which there is discretionary Federal involvement or control,"51 Fed.Reg. 19958 (1986) (emphasis added). The dissent's reading would rob the word "discretionary" of any effect, and substitute the earlier, proposed version of the regulation for the text that was actually adopted.

In short, we read § 402.03 to mean what it says: that § 7(a)(2)'s no-jeopardy duty covers only discretionary agency actions and does not attach to actions (like the NPDES permitting transfer authorization) that an agency is required by statute to undertake once certain specified triggering events have occurred. This reading not only is reasonable, inasmuch as it gives effect to the ESA's provision, but also comports with the canon against implied repeals because it stays § 7(a)(2)'s mandate where it would effectively override otherwise mandatory statutory duties."

A miner operating under the Mining Law statute has a non-discretionary agency "advisory" relationship. A miner cannot be legally tortured into a CEQA, NEPA or ESA scenario. The law also, as the Supreme Court ruled, "stays" the application of the ESA "where it would effectively override otherwise mandatory statutory duties" like (for the purposes of this discussion) the Mining Law.

Violation of National Environmental Policy Act (NEPA)
Under "C Programmatic Analysis and Tiering", non-discretionary activities such as locatable minerals exploration, as well as pick and shovel work and suction dredging where T&E species exist, could be facilitated under programmatic analyses"
In 1994 the California Department of Fish and Game completed their EIR on suction dredging and determined that it was not deleterious to fish, in accordance with following the regulations as adopted. This should be sufficient until a new EIR is completed.
To illustrate this concept the Supreme Court has said:"A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing;...." "A contract executed is one in

which the object [10 U.S. 87, 137] of contract is performed; and this, says Blackstone, differs in nothing from a grant...." "A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is, therefore, always estopped by his
own grant." Fletcher v. Peck, 10 U.S. 87 (1810)

The Public Lands cannot be "free and open" to exploration if the historical means of use by prospectors and miners can be prohibited by the State of California. The State of California may have the power to reasonably regulate activities not incident to mining
upon the public lands, but those same regulations fail when they operate to prohibit the customary usage by legitimate prospectors and miners on valid mining claims or in pursuit of such a claim. These proposed statutory or regulatory amendments are prohibitive and not merely regulatory in fundamental character and, therefore, are unlawful as proposed. We call your attention to:

The DFG can not prohibit through regulation or using their discretion
Ventura County v. Gulf Oil Corporation, 601 F.2d 1090 (1979)
(2) Despite this extensive federal scheme reflecting concern for the local environment as well as development of the nations resources, Ventura demands a right of final approval. Ventura seeks to prohibit further activity by gulf until it secures and Open Space Use Permit which may maybe issued on whatever conditions Ventura determines appropriate, or which may never be issued at all. The federal Government has authorized a specific use of federal lands, and Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress.

Recreation is a privilege in most cases and mining is a property right, a grant of land under the federal mining laws of 1866 and 1872. (30 USC 22 – 54). For the DFG to treat miners, prospectors or mining claim owners, (Mineral Estate Grantees) with the same disrespect as given to the recreational activities will certainly exceed DFG's regulatory authority. It would appear that DFG believes they have discretion to regulate suction dredge mining to the point of prohibition. Case Law says that they can not prohibit prospecting or mining either temporarily or permantly.

Federal laws are always preeminent: once Congress passes laws that occupy an area, no government at a lower tier, i.e., at the state or local level, may pass laws that conflict with the federal laws.

As a miner operating under the U.S. Mining law (30 U.S.C. 22-54) has a non-discretionary agency "advisory" relationship. A miner cannot be legally tortured into a CEQA, NEPA, CWA, or ESA scenario. The law also, as the Supreme Court ruled, "stays" the application of the ESA "where it would effectively override otherwise mandatory statutory duties" like (for the purposes of this argument) the mining law. The mining law (Congressional grant) does not by its very nature admit to a permissive system (lease system), otherwise the mining law would be rendered meaningless. The California Department of Fish and Game (DFG) does not authorize mining (the mining law does), the DFG does not fund mining, and the DFG does not carry out the mining, therefore mining under the U.S. Mining law is not by definition a "federal action" subject to the CEQA, NEPA or CWA due to this fact that federal and state involvement or control is non-discretionary in fundamental character. (See also Karuk v. Forest Service, Supra.)

In U.S. v. Weiss 642 F.2d at 296:
"Although authority exists for the promulgation of regulations, those regulations may, nevertheless, be struck down when they do not operate to accomplish the statutory purpose or where they encroach upon other statutory rights."

Granite Rock v. US
"...County ordinance is preempted because it conflicts with federal law. Specifically, we address whether the ordinance conflicts with the Federal Mining Act because it stands as an obstacle to the accomplishment of the full purposes and objectives of Congress embodied in the Act. Granite Rock, 480 U.S. at 581, 107 S.Ct."

Dakota Mining Assoc. v. Lawrence County 155 F3d 1005 (8th Cir. 1998
Agency actions can often amount to prohibitions that impermissibly encroach upon the right to the use and enjoyment of placer claims for mining purposes (see 30 U.S.C 26). To reinforce this point, in South Dakota Mining Assoc. v. Lawrence County 155 F3d 1005 (8th Cir. 1998), at 1011 the court stated: "...government cannot prohibit a lawful use of the sovereign's land that the superior sovereign itself permits and encourages. To do so offends both the Property Clause and the Supremacy Clause of the federal Constitution. The ordinance is prohibitory, not regulatory, in its fundamental character." Emphasis added.

30 U.S.C. 612(b)
so long as the agency regulatory authority over the miner does not become prohibitive. If the miner can work out a reasonable agreement, i.e. contract generally through an "informational", then all is well. If not, then the miner can complain to the surface management agency through written administrative complaint or the appeal process and assert that the agencies actions are unreasonable, material interfering, prohibitive, and why, pursuant to 30 U.S.C. 612(b) (see also U.S. v. Curtis-Nevada Mines 611 F.2d 1277 at 1285).

Because environmental laws only apply in this setting. Namely the National Environmental Policy Act (NEPA-federal), the Endangered Species
The Court stated in Karuk v. Forest Service 379 F.Supp.2d 1071 at 1094 (N.D. Cal. 2005):

"...mining operations take place pursuant to the General Mining Law and the Surface Resources Act, which confers a statutory right upon miners to enter certain public lands for the purpose of mining and prospecting. This distinction is significant, as it differentiates mining operations from "licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid," which are permissive in nature.
In fact, although Plaintiff vigorously argues that any act requiring "discretion" invokes the ESA, it is well-established that not every agency action triggers the consultation requirement of Section 7(a)(2) of the ESA. As the Ninth Circuit has made clear:
Within the limits prescribed by the Constitution, Congress undoubtedly has the power to regulate all conduct capable of harming protected species. However, Congress chose to apply section 7(a)(2) to federal relationships with private entities only when the federal agency acts to authorize, fund, or carry out the relevant activity.
Sierra Club v. Babbitt, 65 F.3d 1502, 1508 (9th Cir.1995) (emphasis added)."

And at 1095 the court stated:
. Marbled Murrelet, 83 F.3d. at 1074. Indeed, as the Ninth Circuit stated in Marbled Murrelet: Protection of endangered species would not be enhanced by a rule which would require a federal agency to perform the burdensome procedural tasks mandated by section 7 [of the ESA] simply because it advised or consulted with a private party. Such a rule would be a disincentive for the agency to give such advice or consultation. Moreover, private parties who wanted advice on how to comply with the ESA would be loathe to contact the [agency] for fear *1103 of triggering burdensome bureaucratic procedures. As a result, desirable communication between private entities and federal agencies on how to comply with the ESA would be stifled, and protection of threatened and endangered species would suffer.
Id. at 1074-75.

State law under CEQA also is defined as to only apply to discretionary projects as quoted from section 21080 of the Public Resource code:

CALIFORNIA CODES
PUBLIC RESOURCES CODE
SECTION 21080-21098
21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies..."

Conclusion and Property Rights

Conclusion: The suction dredge miners and prospectors are not to be regulated under the discretion of any agency but only the non-discretionary or ministerial regulatory process.
- Unpatented mining claims are "property" in the highest sense of such term, which may be bought, sold and conveyed and will pass by decent. (30 USC 26.94)

Notice is given
I hereby officially request DFG's unlawful actions cease and desist immediately. Failure to do so could subject the Director to personal suit for damages and those individuals acting in concert. The Director may also be subject to prosecution by the Dept. of Justice for Violations of the Hobbs Act (18 U.S.C. 1951), which states in part:
"(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 under this title or imprisoned not more than twenty years, or both.

(b) As used in this section--
(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.
(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." Emphasis added

Respectfully Submitted

Gerald Hobbs
President PLP

Quote

11-21-2009, 06:30 PM #2

jerhobbs
PLP President

Join Date: Feb 2007
Posts: 293

Comments and Constuctive Notice to DFG

These are the Coments and constuctive Notice given the the Ca. Fish and Game at teh Fresno meeting Dec. 16 2009

Public lands for the People inc.
501c-3 non profit org
7194 CONEJO DR.
San Bernardino Ca. 92404
909-889-3039

Mark Stopher Nov. 16, 2009
California Department of Fish and Game
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The purpose of our comments is to inform the DFG that in the process of doing their Environmental Impact Study (EIR) to promulgate Suction Dredge Regulations for the State of California, the DFG should seriously consider retaining an expert on Mining laws.

In the 1994 the DFG did not consider the ramifications of running afoul to the mining laws, the Constitutional protections, other applicable federal laws and the case law decisions on the rights of miners and mining claimants. If the DFG continues to ignore these laws in this present rule making process there will be serious ramifications in a court of law.

We have noticed that the DFG, NOP, on page 18 part 5.5.8 "Location", has apparently misinterpreted or does not understand the definition of what an exclusive right of a mining claim is or means, so we will address the correct meaning for the DFG.

"Many miners also own their own unpatented mining claims to which they have exclusive right only to the locatable minerals under there claim".

It is difficult to understand where the DFG got this particular description of exclusive "right only to the locatable minerals. Exclusive right of a mining claimant is all inclusive within the boundary's of the mining claim not just locatable minerals.

DISCUSSION: The Congress of the United States, as authorized by the Constitution, has the "exclusive" power "...to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;" (Article IV).

In the Mining Acts of 1866 to 1872, the U.S. Congress, as authorized by the Constitution, declared , in the form of a "grant" , to the citizens of the United States, that;

"... the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local custom or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States." (H.B. 365, 39TH CONGRESS, IN THE SENATE OF THE UNITED STATES, JULY 19, 1866, Sec. 1). (emphasis added)

It is important to note that the only stipulations to the grant is that it is made "... subject to such regulations as may be prescribed by law..." and "...to the local custom or rules of miners...". In order to pursue the purpose of this examination (i.e.; to determine what rights, if any, are granted by the 1866-1872 Mining Acts), it is deemed advantageous to First determine what "... regulations as may be prescribed by law," the grant is or may be subject to.

We look to the United States Codes for the answer, in particular, 30 USC, Chpt. 2, Sec. 26,

under the heading, "Locators' rights of possession and enjoyment"; where it clearly states:

"... so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title..." (emphasis added)

So here, in the U.S. Codes, we see that so long as the locators (miners and prospectors) comply with "the laws of the United States...", and State, territorial, and local "regulations" (as long as they are not in conflict with the laws of the United States) "... governing their possessory title..." ... they qualify for and/or meet the stipulations of the grant. It is important to note -- no, indeed, it is vital to note -- that the statutes do not even hint at or mention any other laws, rules, or regulations that the grantee is subject to; other than the local customs or rules of miners.

So just what are these "laws of the United States, and with State, territorial, and local regulations" that govern possessory title? These are the federal, state, and local laws, rules, and regulations that we all follow regarding the locating and keeping of a mining claim. In other words, the laws spelling out what must be done to have a valid Discovery and what information must be included in a "Notice of Location", "Affidavit of Labor", Quit-Claim Deed", and other similar documents; when such documents must be filed; what markers, if any, are required to mark the boundaries of the claim; and in some states, what taxes, if any, must be paid. It is important to note that there is no mention what-so-ever restricting mining methods, or for protecting the environment, for reclamation, or seeking approval from a land management agency and posting of a bond.

A conveyance; i.e. transfer of title by deed or other instrument. Dearing v. Brush Creek Coal Co., 182 Tenn. 302, 186 S.W.2d 329, 331. Transfer of property real or personal by deed or writing. Commissioner of Internal Revenue v. Plestcheeff, C.C.A.9, 100 F.2d 62, 64, 65. A generic term applicable to all transfers of real property, including transfers by operation of law as well as voluntary transfers. White v. Rosenthal, 140 Cal.app. 184, 35 P.2d 154, 155. A technical term made use of in deeds of conveyance of lands to import a transfer. A deed for an incorporeal interest such as a reversion.

As distinguished from a mere license, a grant passes some estate or interest, corporeal or incorporeal, in the lands which it embraces.

Now then; Section 26 (30 USC) goes on to say that as long as the locators of all mining locations comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title that the locators of all mining locations on the public domain:

"...shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations..." (emphasis added)

Use of the word "shall" , means "must" (or "does") have, in the highest order. Lesser direction would be something like "may", "might", etc.. In this usage, "shall" is an absolute, i.e.; the same as "must, in all cases and in all circumstances". And what "shall" the locator of a mining location have as long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title? Nothing short of "...the exclusive right of possession and enjoyment of all the surface...".

We've seen in footnote 1 that "exclusive right" means "Not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or parti-cipation; vested in one person alone." (Black's Law Dictionary, 5th Edition, 1979) (emphasis added) As stated above,

Congress, through the Constitution, has the "exclusive right" to "...dispose of... the Territory or other Property belonging to the United States." No other branch of government has this authority. The miner's "exclusive rights" to possession and enjoyment of their mineral location is just as strong and binding as Congress's "exclusive right" to dispose of territory or other property belonging to the United States.

In other words, according to 30 USC, Chpt. 2, Sec. 26, as long as the locator of a mining location on the public domain complies with the laws and regulations governing the possessory title (to the location), then the locator "shall have the exclusive right of possession and enjoyment of all the surface...". This can only mean one (1) thing; the language is simple. The law says "exclusive right of possession and enjoyment". This right can not be "exclusive" if it is in any way influenced or interfered with by any outside source, such as and including the various land management agencies. Indeed, any such restriction or regulation of bone fide mining operations makes a mockery of the term "exclusive". How can something be "exclusive" if it is shared or subject to outside control? It can't.

"...Exclusive right of possession and enjoyment of all the surface..."; that's what the law declares, and grants. How can the locator's "exclusive right of possession and enjoyment" be "exclusive" if it is secondary to the management of the U.S. Forest Service, the Bureau of Land Management, or other federal, state, and local governments?
How can it be "exclusive" if it is secondary to the interests of fish, plants, bugs, and other critters? It can't. How can the locator's "exclusive right" to the "enjoyment" of all the surface be "exclusive" if the state can tell him when he can mine, how he can mine, or with what size equipment (or worse, that he can't mine). . . or if the Forest Service or BLM can restrict the methods of mining and even occupancy of the surface itself? All of these things (and dozens of others) totally and completely ignore the concept of "exclusive rights".

Some may say that the use of the term "exclusive right" is a mistake... or that it doesn't really mean "exclusive". However, a look at some of the other guarantees or rights granted in the Mining Acts of 1866 – 1872 may shed light on this subject.

INTENT: The intent of the Mining Laws and the continuing intent of Congress is simple and self-evident:

- The general policy of the mining laws is to promote widespread development of mineral deposits and to afford mining opportunities to as many persons as possible. (30 USC 22.50) (emphasis added)

and;

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs... For the purpose of this Act 'minerals' shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium. (Mining and Minerals Policy Act of 1970) (emphasis added)

RIGHTS TO EXCLUSIVE POSSESSION: Not only is the public domain already the land of whomsoever would desire to occupy the land (due to the grants of 1866 – 1872), which land is now held in trust for him, but that the right of possession is exclusively his; to hold and enjoy. This possession is clearly guaranteed by the statutes:

- So long as the locator complies with statutory requirements and performs assessment work he is entitled to hold his possession against all the world, subject to the paramount

sovereignty of The United States, and the legal title is held by the government in trust for him. (30 USC 28.36) (emphasis added)

and;

- By the terms of this section the locator of a mining claim has a possessory title thereto and the right to the exclusive possession and enjoyment thereof, and this includes the right to work the claim, to extract the minerals therefrom, the right to the exclusive property in such mineral as well as the right to defend his possession. (30 USC 22.70) (emphasis added)

NOTE: 30 USC 28.36 states that "...the legal title is held by the government in trust for him." and that the definition in Blacks Law Dictionary for the term "trust" (see footnote 6), second paragraph reads:

A fiduciary relation with respect to property, subjecting person by whom the property is held to equitable duties to deal with the property for the benefit of another person which arises as the result of a manifestation of an intention to create it. (emphasis added)

This means that the United States is acting as "trustee" in a "fiduciary relationship" when they hold the legal title "in trust" for the locator (present or future) of a mineral location. And as the "trustee" of the Mineral Estate, the government is obligated and bound by both the law and the courts "...to act primarily for another's benefit in matters connected with such undertaking." and "...to follow the terms of the trust and the requirements of applicable state law." Or in other words, the government, as the trustee of the Mineral Estate, is obligated to place its primary importance in the benefit of the locator of a mineral location.

Furthermore, "A breach of fiduciary responsibility would make the trustee liable to the beneficiaries for any damage caused by such breach." (see footnote 7) (emphasis added)

So, as trustee of the Mineral Estate, the government is obligated to act primarily for the benefit of the locator of a mineral location, and a breach of this trust makes the trustee liable to the beneficiaries for any damage caused by such breach. As the statutes state, the locator of a mineral location shall have the right to the exclusive possession and enjoyment thereof, and this includes the right to work the claim, to extract the minerals therefrom, the right to the exclusive property in such mineral as well as the right to defend his possession. (30 USC 22.70) (emphasis added)

In this light, it is plain that as the trustee of the Mineral Estate, the government is charged with making the protection of the "exclusive possession and enjoyment" of the location for the locator its primary duty and responsibility.

RIGHT TO SETTLE: The locator of a mining claim is viewed as a settler in the land, and that he may do whatever he has need of which is conductive or incident to his mining effort. The Mining Acts, by provision, as well as by injunction, provides that any prudent man who would carry on any mineral extraction in the forests is regarded as a settler. A settler is one who comes on the land with the intent of settling and establishing himself on the land:

-
- 30 USC 26.91 – The Rights of one entering upon the public domain and locating and working an mineral claim are as of the high order as those of a settler each of whom is in possession under rights initiated which may be the observation of precedent conditions ripen into the right to a final patent. (emphasis added)

PROPERTY RIGHTS:
- Unpatented mining claims are "property" in the highest sense of such term, which may be

bought, sold and conveyed and will pass by decent. (30 USC 26.94)

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I hereby officially request DFG's unlawful actions cease and desist immediately. Failure to do so could subject the Director to personal suit for damages and those individuals acting in concert. The Director may also be subject to prosecution by the Dept. of Justice for Violations of the Hobbs Act (18 U.S.C. 1951), which states in part:

"(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 under this title or imprisoned not more than twenty years, or both.

(b) As used in this section--
(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.
(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." Emphasis added

Respectfully Submitted

Gerald Hobbs
President PLP

Quote

Yesterday, 11:48 AM #3

russau
Senior Member

Join Date: Feb 2007
Posts: 96

thankyou Jerry for reposting this info over here. i also think its important for all to read.

Quote

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