Mr. T.W. Arman & John F. Hutchens joint venture
Two Miners, Owner/Operator, grantee & agent.
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INTERVENTION IN THE UNITED STATES OF AMERICA
COURT OF APPEALS FOR THE NINTH CIRCUIT

Ex rel. HUTCHENS
TWO MINERS & 360, 2744, 4400, 8000, 52,000, 88,000, 103 million ACRES of LAND

T.W. ARMAN and IRON MOUNTAIN MINES, INC. et al, **OWNER** & **OPERATOR**

and on behalf of all others similarly situated

CITIZENS and STATESMEN *in loco parentis, parens patriae, supersedeas, qui tam, intervention.*

v.

UNITED STATES

v.

BAYER CROP SCIENCE FKA AVENTIS

FRAUDULENT DELECTUS PERSONAE

ABSOLUTE SUPERSEDEAS BY RIGHT

WRIT DE EJECTIONE FIRMAE; WASTE

PETITION FOR ADVERSE CLAIMS WRITS OF POSSESSION & EJECTMENT; FRAUD & DECLARED DETRIMENT & NEGLECT & FAILURE: TREBLE DAMAGES

JOINT AND SEVERAL TRESPASSERS,

SURRENDER & EJECTMENT, TRUST

Civ. 2:91-cv-00768- USCA No. 09−17411,
in re: USCA No. 09-70047, USCA No 09-71150
USCFC No. 09-207 L

FILED UNDER THE GREAT SEAL
ABSOLUTE ORDER FOR INSPECTION
PETITION FOR EMERGENCY REVIEW
ORDER FOR REINSTATMENT OF CLAIMS
ORDER FOR CONSOLIDATION OF COURTS
CLOSE AND HOLD OF THE MORMAER – WRONGFUL TAKING, FALSE PRETENSES, &c.

ABSENCE OF *DELECTUS PERSONAE, QUI TAM INTERVENTION IN CAMERA STELLATA*

MR. T.W. ARMAN: *Annuit Coeptis;* ***Insidiae;*** *tam; in camera stellata: audacibus annue cœptis;*

APPLICATION OF THE MONROE DOCTRINE

WITH VERIFICATION BY AFFIDAVIT,

DANGER TO OUR PEACE AND SAFETY.

AUTHORITIES OF JUSTICES JAY, TANEY MENDOZA, BRANNON, & MARSHALL

GIVE US OUR LIBERTY! EVACUATE.
APEX LAW ACTION, REMISSION, REVERSION
DETINUE SUR BAILMENT
LIEN & FORECLOSURE ON PIRACY

INTERVENTION BY RIGHT, REINSTATEMENT AND CONSOLIDATION

We consider a question that has split the federal courts: May a non-settling PRP intervene in litigation to oppose a consent decree incorporating a settlement that, if approved, would bar contribution from the settling PRP? We join the Eighth and Tenth Circuits in holding that the answer is **"yes."**

in looking at the substance of the matter, they can see that it "is a clear, unmistakable infringement of rights secured by the fundamental law." *Booth* v. *Illinois* , 184 U.S. 425 , 429 .

MOTION OF THE RELATOR FOR SUPERSEDEAS & CONSOLIDATION

PURSUANT TO RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. US, 505 F2d 1026.

Exercising your constitutional right cannot be converted into a crime or have sanctions levered against it: The state cannot diminish rights of the people. [Hertado v. California, 100 US 516.] Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. [Miranda v. Arizona, 384 US 436, 491.] There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights. [Sherer v. Cullen, 481 F 946.]"judges of courts of limited jurisdiction are entitled to absolute immunity for their judicial acts unless they act in the clear absence of all jurisdiction." King v. Love, 766 F.2d 962, 966 (6th Cir.), cert. denied, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1985).

I have never seen more senators express discontent with their jobs. ... I think the major cause is that, deep down in our hearts, we have been accomplices to doing something terrible and unforgivable to this wonderful country. Deep down in our hearts, we know that we have bankrupted America and that we have given our children a legacy of bankruptcy. .. We have defrauded our country to get ourselves elected. John Danforth, Republican senator from Missouri, in the Arizona Republic of April 21, 1992

Committee on Oversight and Government Reform, Deterioration of the Clean Water Act

Oversight and Government Reform Committee Chairman Henry A. Waxman and Transportation and Infrastructure Committee Chairman James L. Oberstar wrote to President-elect Obama regarding their investigation into the drastic deterioration of the Clean Water Act enforcement program.

"One of the legacies of the Bush Administration is its failure to protect the safety and health of the nation's waters," said Chairman Waxman. "Our investigation reveals that the clean water program has been decimated as hundreds of enforcement cases have been dropped, downgraded, delayed, or never brought in the first place. We need to work with the new Administration to restore the effectiveness and integrity to this vital program."

New internal documents obtained by the Committees show that hundreds of Clean Water Act violations have not been pursued with enforcement actions. Dozens of existing enforcement cases have become informal responses, have had civil penalties reduced, and have experienced significant delays. Many violations are not even being detected because of the substantial reduction in investigations. Violations involving oil spills make up nearly half of the Clean Water Act violations that have been detected but are not being addressed.

EPA refused to produce hundreds of documents to the Committees and redacted many of the documents it did produce. EPA concealed the identity of corporations and individuals accused of polluting waters and the specific waters that may have been affected.

CORRUPTION AND RACKETEERING

The division of the United States into federations of equal force was decided long before the Civil War by the high financial powers of Europe. These bankers were afraid that the US, if they remained as one block, and as one nation, would attain economic and financial independence, which would upset their financial domination over the world. Otto von Bismark, Chancellor of Germany 1876

All the perplexities, confusions, and distresses in America arise, not from defects in their constitution or confederation, nor from want of honor or virtue, as much from downright ignorance of the nature of coin, credit, and circulation. John Adams, letter to Thomas Jefferson, 25 August 1787

And I sincerely believe, with you, that banking establishments are more dangerous than standing armies; and that the principle of spending money to be paid by posterity, under the name of funding, is but swindling futurity on a large scale. Thomas Jefferson, letter to John Taylor, 28 May 1816

In Federalist No. 33 (next to last para), Hamilton says:

…But it will not follow…that acts of…[the federal government] which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of the..[the States], will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such…[Art. VI, cl. 2] EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION … [emphasis in original]

In the next paragraph, Hamilton points out that a law made by Congress which is not authorized by the Constitution,

…would not be the supreme law of the land, but a usurpation of power not granted by the Constitution….

b) Second, note that Art. VI, clause 2 also shows that only laws of States which are Contrary to the Constitution must fall. States may make whatever laws they wish (consistent with their State Constitutions) except as prohibited by the US Constitution. Laws specifically prohibited to the States are listed at Art. I, Sec. 10. States also may not properly make laws which contradict the Constitution. For example, a State Law which purported to permit 25 year olds to be US Senators would contradict Art. I, Sec. 3, clause 3, and thus would fail under the "supremacy clause".

It is not …a mere possibility of inconvenience in the exercise of powers, but an immediate constitutional repugnancy that can …alienate and extinguish a pre-existing right of sovereignty [in the States]. (4th para)

The necessity of a concurrent jurisdiction in certain cases results from the division of the sovereign power; and the rule that all authorities, of which the States are not explicitly divested in favor of the Union, remain with them in full vigor…[This]is…clearly admitted by the whole tenor of the…proposed Constitution. We there find that, notwith-standing the …grants of …authorities [to the federal government], there has been the most pointed care in those cases where it was deemed improper that the like authorities should reside in the States, to insert negative clauses prohibiting the

exercise of them by the States…[Art. I, Sec. 10] consists altogether of such provisions. This circumstance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the…[proposed Constitution], which…refutes every hypothesis to the contrary. (5th para)

The People ex. Rel. Hutchens, moves this Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the following cases: Civ. 2:91-cv-00768- USCA No. 09−17411, No. 09-70047, USCA No 09-71150 , USCFC No. 09-207 L.

The People ex. Rel. Hutchens moves for consolidation for the purposes of ADVERSE CLAIMS, judgment and appeal. The cases are appropriate for consolidation for the following reasons:

1. The cases involve common questions of law. All causes of action allege that the usurpation, invasion, and occupation of Iron Mountain Mine violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. and general mining law.

2. The cases involve common questions of fact because they arise from the same factual situation.

3. Judicial convenience and economy will be promoted by consolidation of the actions. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendants, the plaintiffs in the actions, witnesses who would otherwise be required to testify in two cases, and this Court.

4. Consolidation will not delay the final disposition of this matter.

WHEREFORE, the Relator requests that its motion for consolidation be granted.

Held: The reference to "administrative" reports, audits, and investigations in §3730(e)(4)(A) encompasses disclosures made in state and local sources as well as federal sources. Pp. 4–21.

FROM CONGRESSMAN WALLY HERGER'S WEBSITE

Private property ownership is a fundamental right. Indeed, the ability to own and use property spurs innovation and entrepreneurship and is a cornerstone of our prosperity and high standard of living. The Fifth Amendment famously protects our property rights from undue government interference stating, property shall not "be taken for public use, without just compensation." This amendment is also joined by the Fourteenth Amendment which together protects citizens from government's taking of private property "without due process of law."

LEGAL AUTHORITY

… "In the mining partnership those occurrences make no dissolution, but the others go on; and, in case a stranger has bought the interest of a member, the stranger takes the place of him who sold his interest, and cannot be excluded. If, death, insolvency, or sale were to close up vast mining enterprises, in which many persons and large interests participate, it would entail disastrous consequences. From the absence of this *delectus personae* in mining companies flows another result, distinguishing them from the common partnership, and that is a more limited authority in the individual member to bind the others to pecuniary liability. He cannot borrow money or execute notes or accept bills of exchange binding the partnership or its members, unless it is shown that he had authority; nor can a general superintendent or manager. They can only bind the partnership for such things as are necessary in the transaction of the particular business, and are usual in such business. Charles v. Eshleman, 5 Colo. 107; Shillman v. Lachman, 83 Am Dec. 96, and note; McConnell v. Denver, 35 Cal. 365; Jones v. Clark, 42 Cal. 181; Manville v. Parks, 7 Colo. 128, 2 Pac. 212; Congdon v. Olds, 18 Mont. 487, 46 Pac. 261. 29 S.E. 505. In fact, it is a rule that a nontrading partnership, as distinguished from a trading commercial firm, does not confer the same authority by implication on its members to bind the firm; as. e.g. a partnership to run a theater or other single enterprise only. Pease v. Cole, 53 Conn. 53, 22 Atl. 681; Deardorf's Adm'r v. Tacher, 78 Mo. 128; Smith, Merc. Law, 82; T Pars. Partn. § 85; Pooley v. Whitmore, 27 Am. Rep. 733.

PETITION TO RELOCATE AND SURVEY; THE "OWL" ET AL, LODE MINING CLAIMS.

A mining partnership is a nontrading partnership, and its members are limited to expenditures necessary and usual in the particular business. Bates, Partn. , § 329. Members of a mining partnership, holding the major portion of the property, have power to do what may be necessary and proper for carrying on the business, and control the work, in case all cannot agree, provided the exercise of such power is necessary and proper for carrying on the enterprise for the benefit of all concerned. Dougherty v. Creary, 89 Am. Dec. 116.

These principles settle much of this case. The demurrer was properly overruled, because there was a partnership, and equity only has jurisdiction to settle partnership accounts. 5 Am. & Eng. Dec. Eq. 74; 17 Am. & Eng. Enc. Law, 1273. * * * **Justice Brannon**

In Dalliba v. Riggs, 7 Ida. 779, 82 Pac. 107, it was laid down that while a court of equity can appoint a receiver to perfect and preserve mining property, it " has no authority to place its receiver in charge of such property and operate the same, carrying on a general mining business, and while it turns out to be at a loss, as is likely to be the result in such cases, charge the same up as a preferred claim and lien against the property, to the prejudice and loss of the holders of prior recorded liens on the same property" (82 Pac. At pp. 108-109). In that case the receiver appeared to have carried on the mining operations without any order of court directing him to do so and with reckless extravagance, and in addition was shown not only not to have kept accurate accounts but also to have made in the account filed "many charges against the estate where no charge whatever should have been made and none in fact existed." The court accordingly denied the receiver any allowance for his own time or services and any allowance for attorney's fees.

ABSENCE OF *DELECTUS PERSONAE*

"The fact remains that AIG's rescue broke all the rules, and each rule that was broken poses a question that must be answered." - Ms. Elizabeth Warren, TARP oversight chairwoman.

SUPERSEDEAS & CONSOLIDATION

"There is no crueler tyranny than that which is exercised under cover of law, and with the colors of justice" - U.S. v. Jannotti, 673 F.2d 578, 614 (3d Cir. 1982)

CONSPIRACY

Here's another possible reason there won't be a prosecution: Our economy was shattered by a syndicate, a ring, a cabal at the top of the financial pyramid. To move against any one of them - AIG's Joe Cassano, the auditors, Goldman Sachs, or even the credit agencies - would trigger a chain reaction of rats turning on one another, summoning each other to testify, and spilling each other's dirty secrets in an attempt to save themselves.

ABSOLUTE ORDER FOR TEMPORARY INJUNCTIVE RELIEF FOR CEQA EIS REVIEW

CHAPTER X - *Of Treaties and Ambassadors, and the Entire Dissolution of States.*

I. <Wars in general are setled by treaties>. The chief laws of nature about treaties were explained in the doctrine of contracts in natural liberty.{* } But we must remember that the exception of unjust force and fear cannot be admitted against the obligation of any treaties of peace; otherwise the old

controversies <that occasioned the war> might always be kept a-foot. And yet such exceptions may justly take place when the war is manifestly and avowedly unjust on one side; or if the terms imposed {by the more potent side} are manifestly injurious and contrary to all humanity. In these cases the party injured may insist upon an arbitration; and if the other side refuse to submit to it, each side must by force consult its own safety and the maintenance of its rights{, by what aids it can find}.1

Treaties are divided into *real,* and *personal:* the personal, which are less in use, are entered into in favour of the prince's person, and cease to bind upon his demise. The *real,* respect the body of the people, or the nation, which is deemed immortal. 2 Treaties are also divided into the *equal,* {such as bring equal or proportionable burdens on each side,} and *unequal* {which bring unequal burdens}.3 But 'tis not every unequal treaty that any way impairs or diminishes the† majesty and independency of the side submitting to the greater burden.

Hostages in former ages were securities commonly given for performance of treaties, but they are now gone into disuse; because it would be exceedingly <barbarous and> inhumane to treat the innocent hostages any way harshly because of the perfidy of their country.

II. In making treaties *ambassadors* <or intermediaries> are employed. Their rights are all the same, whatever names are given them, if they are entrusted to transact the affairs of a sovereign state. Their persons should be sacred and inviolable, as we said above. They have a just natural right to demand that their proposals should be delivered. But as to an allowance to reside any time in the state to which they are sent, they may claim it as due out of humanity, but cannot insist on it as a perfect right. Since the business of the more active ambassadors is much the same with that of spies upon the nations where they reside. If they are allowed to reside; the law of nature would give them no higher rights or immunities, than any other foreigner might claim without any publick character.4 But by the voluntary laws of nations, they have many singular privileges and immunities, both for themselves and all their necessary retinue: all which however any state might without any iniquity refuse to grant them, if they give timeous intimation of their design to do so to all concerned.

190 See Lucas v. S.C. Coastal Comm'n, 505 U.S. 1003, 1031–32 (1992). Once a mining claim is determined to constitute a valid property interest, then state law will control how it can be sold, transferred, inherited, and the like—unless any particular aspect of that property right is preempted by

federal law. See Duguid v. Best, 291 F.2d 235, 239, 242 (9th Cir. 1961).

191 See Lucas, 505 U.S. at 1031–32.

192 480 U.S. 470, 519 (1987) (quoting Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980)) (alterations in original). See also Palazzolo, 533 U.S. at 630; Lucas, 505 U.S. at 1016 n.7; Preseault v. Interstate Commerce Comm'n, 494 U.S. 1, 20–24 (1990) (providing a detailed articulation of the principle that state law defines the nature of property rights); Kinross Copper Corp. v. Oregon, 981 P.2d 833 (Or. App. 1999) (denying a waste water discharge permit for mining on federal mining claims not a taking because there is no right to pollute), cert. denied, 531 U.S. 960 (2000).

193 See, e.g., M & J Coal Co. v. United States, 47 F.3d 1148, 1153 (Fed. Cir. 1995) (discussing the impact of federal law of navigational servitude and submerged lands on property definitions); see also Lucas, 505 U.S. at 1029 (discussing the submerged lands and navigational servitude); Scranton v. Wheeler, 179 U.S. 141, 163 (1900) (defining property rights in the context of submerged lands); Palm Beach Isles Assocs. v. United States, 208 F.3d 1374 (Fed. Cir. 2000) (navigational servitude), aff'd, 231 F.3d 1354 (Fed. Cir. 2000), reh'g en banc denied, 231 F.3d 1365 (Fed. Cir. 2000). In Palm Beach Isles, the court found that a permit denial for environmental reasons, rather than navigational reasons, did not invoke the navigational servitude "background principle." Id. at 1384.

194 978 F.2d 1269, 1276 (D.C. Cir. 1992).

195 Id. at 1275–76.

196 Id. at 1277–87.

197 278 F.2d 842, 847 n.4 (9th Cir. 1960) (citing United States ex rel. Tenn. Valley Auth. v. Powelson, 319 U.S. 266, 279 (1943)); see also Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency, 561 F.2d 1327, 1330 (9th Cir. 1977) (holding that federal courts are not bound by state law but look to it for aid in discerning the scope of property interests). These formulations may be inconsistent with Justice O'Connor's dissent in Preseault, 494 U.S. at 20–24.

198 Adaman, 278 F.2d at 847.

199 Id.

200 See id.

201 Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1027, 1030 (1992) (quoting Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577 (1972)).

202 See id. at 1028–29.

203 See, e.g., Schneider v. Cal. Dep't. of Corr., 151 F.3d 1194, 1200–01 (9th Cir. 1998).

The . . . Court's recognition of the unremarkable proposition that state law may affirmatively create constitutionally protected "new property" interests in no way implies that a State may by statute or regulation roll back or eliminate traditional "old property" rights. As the Supreme Court has made clear, "the government does not have unlimited power to redefine property rights." . . . Rather, there is, we think, a "core" notion of constitutionally protected property into which state regulation simply may not intrude without prompting Takings Clause scrutiny.

Id. at 1200 (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)). Justice Marshall, in his concurrence in Pruneyard Shopping Center v. Robins, noted:

I do not understand the Court to suggest that rights of property are to be defined solely by state law, or that there is no federal constitutional barrier to the abrogation of common-law rights by Congress or a state government. The constitutional terms "life, liberty, and property" do not derive their meaning solely from the provisions of positive law. . . . Quite serious constitutional questions might be raised if a legislature attempted to abolish certain categories of common-law rights in some general way. Indeed, our cases demonstrate that there are limits on governmental authority to abolish "core" common-law rights, including rights against trespass, at least without a compelling showing of necessity or a provision for a reasonable alternative remedy.

447 U.S. 74, 93–94 (1980) (Marshall, J., concurring).

The Ninth Circuit observed:

"[T]here is, we think, a 'core' notion of constitutionally protected property," and a state's power to alter it by legislation "operates as a one-way ratchet of sorts," allowing the states to create new property rights but not to encroach on traditional property rights." . . . [W]ere the rule otherwise, States could unilaterally dictate the content of—indeed altogether opt out of both the Takings Clause and the Due Process Clause simply by statutorily recharacterizing traditional property-law concepts.

Wash. Legal Found. v. Legal Found. of Wash., 236 F.3d 1097, 1108 (9th Cir. 2001) (quoting Schneider, 151 F.3d at 1200–01), reh'g, 271 F.3d 835, 841 (9th Cir. 2001) (en banc), cert. granted, 122 S. Ct. 2355 (2002) (No. 01-1325).

Lawrence H. Tribe writes:

To the degree that private property is to be respected in the face of republican and positivist visions, it becomes necessary to resist even an explicit government proclamation that all property acquired in the jurisdiction is held subject to government's limitless power to do with it what government wishes. Indeed, government must be denied the power to give binding force to so sweeping an announcement, . . . if we are to give content to the just compensation clause as a real constraint on [government] power . . . . [E]xpectations protected by the clause must have their source outside positive law.

Record Settlement to Cleanup One of the Nation's Most Toxic Waste Sites. The United States and California reached an agreement with Aventis CropSciences USA, Inc. that will fund cleanup costs that could approach $1 billion at the Iron Mountain Mine Superfund Site near Redding, California. The settlement is one of the largest settlements with a single private party in the history of the federal Superfund program. Through the creation of a unique funding vehicle that will generate $200-300 million over 30 years with a $514 million balloon payment in year 30, the settlement assures that money is available each year for long-term operation of a pollution treatment and control system needed to prevent toxic discharges from the site. This site has been one of the largest point sources of toxic metals in the United States, and the source of the most acidic mine drainage in the world. Aventis will also pay federal and state trustees $10 million for natural resource restoration projects.

Federal sovereign immunity

"Though this was the intent of the Congress [to waive sovereign immunity] in passing the 1972 Federal Water Pollution Control Act Amendments, the Supreme Court, encouraged by Federal agencies, has misconstrued the original intent." S. Rep. No. 370, 95th Cong., 1st Sess. 67 (1977), reprinted in 1977 U.S.C.C.A.N. 4326, 4392. See Clean Air Act Amendments of 1977, Pub. L. No. 95-95, [section] 116, 91 Stat. 711 (1977); see also Clean Water Act Amendments of 1977, Pub. L. 217, [subsection] 60, 61(a), 91 Stat. 1597, 1598 (1977).

In virtually every instance where a government has suggested that ordinary environmental regulations that prohibit ordinary development activities can be insulated from the Takings Clause because the prohibited activity is alleged to be a "nuisance," the government has lost. The Court of Federal Claims and the Federal Circuit Court of Appeals, the courts with the most experience in examining takings claims in the context of federal wetland regulations, have expressly rejected this notion in every case where it has considered the idea Other courts have agreed as well. Most importantly, the United States Supreme Court in *Lucas* was highly skeptical of the idea that building a home in a residential subdivision could constitute a common law nuisance.

In Just v. Marinette County, the Wisconsin Supreme Court held that "[a]n owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others." Just was cited with approval by the Washington Supreme Court in Orion Corp. v. Washington: "Orion never had the right to dredge and fill its tidelands." A similar result was reached by the New Hampshire Supreme Court.216 However, in Florida Rock Industries, Inc. v. United States, the Federal Circuit found housing to be a more valuable use than swampland, while the court in Loveladies Harbor, Inc. v. United States expressly rejected the Just formulation as illogical. More significantly, after Lucas was decided, some courts have begun to expressly reject the notion that a prohibition on filling wetlands can constitute a background principle of state law. This makes some sense, as for many years it was public policy to fill wetlands.

2. Is the Public Trust Doctrine a Relevant Background Principle?

When riparian wetlands are at issue, a relevant inquiry is whether the proposed use of the wetland interferes with the public trust doctrine. Public trust rights traditionally have included the right to access navigable waterways for fishing and navigation. Modern commentators argue that the public trust also includes recreational and ecological values. Thus, any regulation that would restrict the ability of an individual to utilize a private property interest in a resource subject to the public trust would not have a cause of action for a taking because in reality the private property interest never really existed in the first place. In fact, some commentators such as Professor Sax posit that property rights should be redefined to make them more akin to water rights and subject to an analogous "ecological public trust."

California Health and Safety Code Section 25548

The California legislature, like Congress, took action in 1996 and enacted California Health and Safety Code section 25548–the California law analogous to CERCLA section 107(n). The stated intent of section 25548 is "to specify the type of lender and fiduciary conduct that will not incur liability for hazardous material contamination." As such, section 25548 provides exemptions and limitations to potential fiduciary liability under the environmental laws. Thus, section 25548 residually identifies the universe of potential liability for fiduciaries. Specifically, section 25548 addresses the exceptions to and limitations on "the liability of trustees, executors, and other fiduciaries for hazardous material contamination involving property that is part of the fiduciary estate."

Section 25548.3 eliminates personal liability for fiduciaries by confining their potential liability to the estate assets. The caveats come in section 25548.5, which makes it clear that fiduciaries do not have blanket immunity from liability under the environmental laws.63 The protection of the limitation of liability in section 25548.3 will not apply where (1) that liability results from the fiduciary's negligence or recklessness; (2) the fiduciary conducts a removal or remedial action without providing proper notice to the appropriate agency; (3) the potential liability results from acts outside the scope of the fiduciary duties; (4) the fiduciary relationship is fraudulent in that its raison d'être is to avoid liability; or (5) the fiduciary is also a beneficiary, or benefits from acting as fiduciary, in a manner over and above that considered customary or reasonable for a fiduciary. see also: United States v. Newmont USA Ltd., 504 F. Supp. 2d 1050, 1061–69 (E.D. Wash. 2007) (concluding, without actually adopting the "indicia of ownership" test in Long Beach Unified Sch. Dist. v. Dorothy B. Godwin Cal. Living Trust, 32 F.3d 1364 (9th Cir. 1994), that the United States held sufficient indicia of ownership in an Indian reservation to be held an "owner" under CERCLA);

1. The defendant acquired title to the property subsequent to the disposal or placement of the hazardous substance.

2. The defendant acquired title to the property through inheritance or bequest.

3. The defendant "provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial

response action at the facility)."

4. The defendant "is in compliance with any land use restrictions established or relied on in connection with the response action at a facility."

5. The defendant "does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action."

With respect to beneficiary ownership for CERCLA purposes, creation of an express trust in California historically vested full title of trust property in the trustee or trustees. The California legislature repealed this statute in 1986, so the modern rule may now apply. The modern rule holds that creation of a trust divides title such that the trustee or trustees take legal title, and the beneficiary or beneficiaries take equitable title.

For purposes of evaluating the potential CERCLA liability of a trust beneficiary based on his or her status as owner, the initial question is whether the equitable interest held by trust beneficiaries is sufficient to support liability.

With respect to whether title was acquired via inheritance or bequest, CERCLA defines neither "inheritance" nor "bequest." CERCLA case law also provides no clear rules or definitions for what exactly constitutes an inheritance or bequest. Reasoning from the dictionary definitions of "inheritance," "bequest," and "devise," property taken through testamentary trusts or intestate succession would likely constitute inherited or bequeathed property, as the property interest transfers upon the death of the prior owner. No federal court opinions addressing this issue of whether inter vivos trusts or lifetime gifts constitute an inheritance or bequest for purposes of the inheritance or bequest defense exist. The only authority on point is Tamposi Family Investments, an opinion of the Environmental Protection Agency Appeals Board.

In Tamposi, the Appeals Board rejected petitioner's argument that a gift from a father to a real estate investment partnership, in which his children were the exclusive partners, should qualify for the inheritance or bequest defense. Citing Black's Law Dictionary definitions for "inheritance," "bequest," and "devise," the Appeals Board found that the text of CERCLA indicated that the inheritance or bequest defense was inapplicable to inter vivos transfers, as the defense only applied to transfers occurring upon death of the prior owner. Since it is the sole authority on point and an analysis of

CERCLA by an arm of the EPA itself, courts considering the issue in the future will likely find Tamposi highly persuasive and may defer to the agency's interpretation. Thus, the best option for settlers wishing to protect beneficiaries from CERCLA liability during the lifetime of the settlor is to use testamentary trusts and devises in wills to transfer interests in impacted property. They should then provide bequests to beneficiaries that may enjoy limited liability status due to the form of business (such as an LLC not comprised of beneficiary members). Combining these steps with thoughtful timing of sales or distributions to occur after cleanup, or in an otherwise protective manner, are also optional protective measures. However, there is currently no authority as to what structures will be effective. The most

important fact for beneficiaries to keep in mind is that the estate, and therefore any property in trust, will always be fully liable if the settlor was personally liable. The question is how to avoid or minimize the personal liability of the beneficiaries. This approach is entirely consistent with the settlor's intent and legal status: the settlor owned the property, the settlor was personally liable, and the settlor intended to give the beneficiary what he possessed during his life. 129 Id.

Although extremely persuasive, the decision is not a perfect interpretation of CERCLA. Tamposi's primary flaw is on the issue of inquiry. The Appeals Board cites to the congressional comments on CERCLA as support for the contention that individuals who take impacted property by inheritance or bequest must still conduct "reasonable inquiry" into the contamination, even if they have no knowledge of the inheritance or bequest. Id. at 125. Perhaps this was the intent of certain individual members of Congress, but this failed to make its way into the text of the statue.

Nevertheless, the presence of this language in Tamposi raises the possibility that some level of inquiry, albeit a very low level, will be required of owners who take title by inheritance or bequest. Potential beneficiaries may be able to disclaim property placed in trust for their benefit. See, e.g., CAL. PROB. CODE § 15309 (West 2002) ("A disclaimer or renunciation by a beneficiary of all or part of his or her interest under a trust shall not be considered a transfer under Section 15300 or 15301."). While an enticing theoretical solution, practically this is not a good option where the property value exceeds, or will exceed, the cost of remediation.

The California Code of Regulations addresses taxation rules for changes in ownership in title 18, section 462. Section 462.160 pertains to trusts. Subsection (a) of section 462.160 provides the general rule that transfer of real property interests into trusts, by the settlor or anyone else, is a change in ownership; subsection (b) provides instances excluded from this rule. Subsection (c) provides the general rule that termination of a trust or any portion of a trust, constitutes a change in ownership, and subsection (d) provides the exceptions to this second general rule. These rules for exclusions and exceptions–for example, those transfers of interests that do not constitute changes in ownership–are complex and are therefore presented in the Appendix in tabular form in an attempt to simplify comparisons. While untested in the courts, would-be settlers and/or beneficiaries may be able to use these rules as a guide for selecting trusts that will make CERCLA owner liability for the beneficiaries less likely, or at least delay such potential liability until such time as the property may be transferred with less or no risk. Given the foregoing, it appears that the best overall strategy is to anticipate transfers in property, to attempt to structure such transfers to fall within the statutory defenses, and to preserve and pursue rights against other potentially responsible parties.

CAMERA STELLATA

EPA, DOJ, AIG, Bayer & AstraZeneca, successor to Stauffer Chemical, & Jardine Matheson

Bayer CropScience is with annual sales of about EUR 6.5 billion one of the world's leading innovative cropscience companies in the area of crop protection (Crop Protection), non agricultural pest-control (Environmental Science), seeds and plant biotechnology (BioScience).

Aventis CropScience formed through merger of AgrEvo and Rhône-Poulenc Agro. Bayer CropScience formed through Bayer's acquisition of Aventis CropScience. AstraZeneca liable for claim by Iron Mountain Mine

AstraZeneca was formed on 6 April 1999 through the merger of Astra AB of Sweden and Zeneca Group PLC of the UK – two companies with similar science-based cultures and a shared vision of the pharmaceutical industry.

Jardine Matheson (original owner of Mountain Copper Co., Iron Mountain Inv. Co.)

The Group's interests include Jardine Pacific, Jardine Motors, Jardine Lloyd Thompson, Hongkong Land, Dairy Farm, Mandarin Oriental, Jardine Cycle & Carriage and Astra International. These com-

panies are leaders in the fields of engineering and construction, transport services, insurance broking, property investment and development, retailing, restaurants, luxury hotels, motor vehicles and related activities, financial services, heavy equipment, mining and agribusiness. The Group also has a minority investment in Rothschilds Continuation, the merchant banking house.

Incorporated in Bermuda, Jardine Matheson Holdings Limited has its primary share listing in London, with secondary listings in Bermuda and Singapore. Jardine Matheson Limited operates from Hong Kong and provides management services to Group companies.

CURIA REGIS OF THE ARMANSHIRE

The Act of 1487 (3 Hen. VII.) created a court composed of seven persons, the Chancellor, the Treasurer, the Keeper of the Privy Seal, or any two of them, with a bishop, a temporal lord and the two chief justices, or in their absence two other justices. It was to deal with cases of "unlawful maintainance, giving of licences, signs and tokens, great riots, unlawful assemblies"; in short with all offences against the law which were too serious to be dealt with by the ordinary courts. The jurisdiction thus entrusted to this committee of the council was not supplementary,

therefore, like that granted in 1453, but it superseded the ordinary courts of law in cases where these were too weak to act. The act simply supplied machinery for the exercise, under special circumstances, of that extraordinary penal jurisdiction which the council had never ceased to possess. By an act of 1529 an eighth member, the President of the Council, was added to the Star Chamber, the jurisdiction of which was at the same time confirmed. At this time the court

performed a very necessary and valuable work in punishing powerful offenders who could not be reached by the ordinary courts of law. It was found very useful by Cardinal Wolsey, and a little later Sir Thomas Smith says its object was "to bridle such stout noblemen or gentlemen who would offer wrong by force to any manner of men, and cannot be content to demand or defend the right by order of the law."

In 1661 a committee of the House of Lords reported "that it was fit for the good of the nation that there be a court of like nature to the Star Chamber". Congress in 1989 unanimously passed the WPA. S.372 legislation would allow access to jury trials and would remove the exclusive jurisdiction of the U.S. Court of Appeals. **Application of Supreme Court Rule 4**

At the opening of the United States Circuit Court in Boston on May 16, Judge SPRAGUE delivered a charge to the Grand Jury, in which he defined the state of our laws with reference to the crime of piracy. After citing provisions from the laws of 1790, 1820, 1825, 1846 and 1847, as to what constitutes the general crime, with the different degrees of penalty, the Judge remarks that these enactments were founded upon the clause in the Constitution which gives Congress the power to define and punish piracy. But the constitutional power to regulate commerce also affords a basis for additional penal enactments, covering all possible aggressions and depredations upon our commerce. The Judge then lays down the following important principles, the bearing of which will be sufficiently evident in the present crisis:

"These statutes being enacted pursuant to the Constitution are of paramount authority, and cannot be invalidated or impaired by the action of any State or States, and every law, ordinance and constitution made by them for that purpose, whatever its name or form, is wholly nugatory and can afford no legal protection to those who may act under it. But suppose that a number of States undertake by resolution to throw off the Government of the United States and erect themselves into an independent nation, and assume in that character to issue commissions authorizing the capture of vessels of the United States, will such commissions afford protection to those acting under them against the penal laws of the United States? Cases have heretofore arisen where a portion of a foreign empire -- a colony -- has undertaken to throw off the dominion of the mother country, and assumed the attitude and claimed the rights of an independent nation, and in such cases it has been held that the relation which the United States should hold to those who thus attempt and claim to institute a new Government, is a political rather than a legal question; that, if those departments of our Government which have a right to give the law, and which regulate our foreign intercourse and determine the relation in which we shall stand to other nations, recognize such new and self-constituted Government as having the rights of a belligerent in a war between them and their former rulers, and the United States hold a neutral position in such war, then the judiciary, following the other departments, will to the same extent recognize the new nation.

Executive Order 11988 requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid di-

rect and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, "each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities" for the following actions: acquiring, managing, and disposing of federal lands and facilities; providing federally-undertaken, financed, or assisted construction and improvements; conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

STRIKE THE CONSENT DECREE, VOID AND VACATE, REMISSION, REVERSION, DETINUE SUR BAILMENT. *QUANTUM DAMNIFICATUS* REMEDY DEMANDED CONDEMNATION OF THE CHAPPIE-SHASTA OHVA, ON MERITS - ADVERSE CLAIMS

All premises having been duly considered, Relator now moves this honorable Court, on behalf of the United States of America State of California as private attorneys general and Inspector General:

QUANTUM DAMNIFICATUS QUARE IMPEDIT

The name of a writ directed by the king to the sheriff, by which he is required to command certain persons by name to permit him, the king, to present a fit person to a certain church, which is void, and which belongs to his gift, and of which the said defendants hinder the king, as it is said, and unless, etc. then to summon, etc. the defendants so that they be and appear, etc.

Congress has the right to make any law that is 'necessary and proper' for the execution of its enumerated powers (Art. I, Sec. 8, Cl. 18).

Signature:_____

/s/ John F. Hutchens, parens patriae Tenant in-Chief, Warden of the Arboretum, Gales & Stannaries

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.

Date: June 3,, 2010_ Signature:_____

Verified affidavit: /s/ John F. Hutchens, Mormaer of the Armanshire, Minister of Natural Resources Grantees Agent for Mr. T.W. Arman, Confidential Secretary, & Deputy Levying Officer of Record.

PRIVATE INSPECTOR GENERAL OF THE IRON MOUNTAIN MINE SUPERFUND SITE