Jefferson Mining District

The Date of April 12, 2013.

SUMMARY FOR CONTENTS OF PUBLIC COMMENT **OPPOSING** LEGISLATION
Senate Environment & Resources Committee **SB 217**

Please add this Summary Sheet and Attached Comment to the Bill Folders for SB 217 and make this notice a part of the Public Record.

Comment Summary Subject Matter Showing Opposition Warranted

The Bill Has No Underlying Authority as Evidenced by Attorney General Misrepresentations and Frauds of Omission.

Comment and Incorporated Material Attached

Jefferson Mining District

The Date of April 12, 2013.
COMMENT FOR THE PUBLIC RECORD
SB 217

Because of surprise and lack of adequate time for response to each:
Please add this token Comment and Summary to the Bill Folder for SB 217 and make this notice a part of the Public Record.

Resolved: Those of the Assembly of Jefferson Mining District vigorously OPPOSE the Bill for the following substantial Law-based reasons, time prejudicially obstructing a more informed response.

Dear Senator Courtney, Senator Dingfelder, and the Environment & Resources Committee Members:

The Bill Has No Underlying Authority as Evidenced by Attorney General Misrepresentations and Frauds of Omission.

These comments are Notice for purposes of future litigation, determining official culpability, and for other purpose. Jefferson Mining District has been involved with two legislatively ordered hearings with agencies regarding the substantive law presented in Comment showing the state has no authority to interfere in any way with the lands identified in the Bill.

These hearings where in conjunction with HB 2248, regarding state or agency authority and jurisdiction over the mineral estate and HB 2259 regarding the authority and jurisdiction of the state over water and water appropriations. In both hearings the Attorney General made material misrepresentations of law, committed frauds of omission and commission, was derelict in the duties of the Office, and did not produce one shred of lawful basis to show the state has or could have any authority or jurisdiction over the lands or possessions adversely affected by those House bill as proposed. Senate Bill 401 contains the same infirmities. There is no Authority or Jurisdiction the state may resort to which the bill requires if it is to be considered valid. The Bill represents a collusive deprivation of rights, 18 U.S.C §§ 241, and felonious acts under state law, ORS 164.075, regarding extortion under color of authority. Please find attached, incorporated by this reference, those proceedings in the form of a Memorandum from the Attorney General and the Reply of Jefferson Ming District, of public record, as well as the Response, of public record, the Notice of Proceedings at the Request of the Chairman of the Agriculture and Natural Resources Committee Before the Oregon Water Resources Department with the Attorney General for the meeting of April 4, 2013, showing the crimes and dereliction committed by the agency and the Attorney General. The continuing silence by the Attorney General is another misrepresentation. Silence alone is rarely a basis for finding equitable estoppel, but "where a party has a legal duty to speak, silence can constitute an affirmative 'misrepresentation.'" Kosakow

v. New Rochelle Radiology Assocs., P.C., 274 F.3d 706, 725 (2d Cir. 2001); see also Veltri v. Bldg 32B-J Pension Fund, 393 F.3d 318, 326 (2d Cir. 2004); General Elec. Capital Corp. v. Armadora, S.A., 37 F.3d 41, 45 (2d Cir. 1994). Case 1:12-cv-01087-DLC Document 156 Filed 03/21/13 Page 67 of 91 AP v. Meltwater, 2013.

The U.S. Supreme Court has also stated that "No state legislator, or executive or judicial officer can war against the constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

The Attorney General provides no power to the state or agency to invent an authority to manage a water right and steal it for non-compliance. Congress disposed of the water by grant. The State shall faithfully tend to its obligations and not interfere.

Introduction.

My name is Ron Gibson. I am duly elected by the Assembly of Jefferson Mining District, to the Office of interim chairman, commenting here in this official capacity. I have 43 years experience in the mineral industry, including engineering, mineral estate possession, mineral extraction, mineral product invention, and research and application of the mining law, including Water Law, more specifically the Water Appropriation Water Doctrine, and of ingress and egress, including highways. Mining districts have governmental power and authority and special expertise privy to the unique subject matter of the mineral estate acknowledged by Congress through prevailing federal legislative enactment. Jefferson Mining District is the largest mining district in America, the jurisdiction of which currently serving thousands of mineral estate and other Mining Law grantees and directly covering 4 states including the entire state of Oregon.

Jefferson Mining District authority extends to any issue adversely affecting miners or mining law related grantees in the cognizance of Jefferson Mining District, such as is being attempted in any of the current proposed legislation adversely affecting the mineral estate or granted highways. Being the Mining law potentially affects every citizen, Jefferson Mining District serves and responds on behalf of untold millions of Americans now and into the future.

Thank you for this opportunity to respond to the proposed legislation SB-217. Being a compilation of foundational legal precedence law principles and notice for purposes of execution of lawful remedies in the very near future should this committee pass any bill purporting to amend the mining law, together with expertise in mining law, We ask you to give this comment the special consideration it deserves to avoid a disaster were these sorts of bills to become law.

SB 217 Provision.

SB 217 A BILL FOR AN ACT Relating to an annual management fee on water rights; creating new provisions; amending ORS 536.009; and declaring an emergency.

Those of the Assembly of Jefferson Mining District vigorously OPPOSE SB 217.

Time Prejudice.

Trying to render the whole of the mining law into a cogent response to a facial takings in the form of the proposed bill, hobbled by the inadequate time provided to respond, a deprivation of substantial due process on matters of vested property and government trust relationships and obligations, being prejudiced further by the various legislative time constraints and political maneuverings imposed obstructing sufficient notice and opportunity to adequately respond on the important and myriad subject matters involved, We present the following compilation of precedent law and application due diligence which the prior committee or Legislative Council were duty-bound to perform prior to advancing the proposed ill-advised legislation which We require be returned to the Legislative Council for confirmation of lack of conflict with existing federal and state laws and to avoid future litigation for committing unlawful takings.

Supremacy Clause, and Property Clause, Violations.

The current proposed legislation, among many other violations, which cannot be adequately covered in the time provided, is not only a breach of the fiduciary duties of the State, but will, more importantly, be inconsistent with prevailing federal or congressional power of disposal ceded in the ACT OF CONGRESS ADMITTING OREGON INTO UNION, Approved February 14, 1859, establishing that the "*State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof*", the Supremacy Clause, Property Clause, Commerce Clause, or the national Mining Law.

The Act of Congress of July 26, 1866, the "Lode Law" a primary disposal of the soil and water:

> Section 1 :
> 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.
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> SEC. 9. *And be it further enacted*, That whenever, by **priority of possession**, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the

possessors and owners of such vested rights, **shall be maintained and protected** in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: *Provided, however,* That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Herein establishes the duty and obligation of the state to protect the water vesting, at the very least, in any mineral appropriator whose rights relate to the date of the granting act. The Act requires observation of a priority of possession which the proposed bill seeks to wrongly destroy.

Further, by the historical Custom of mining districts and pursuant to mining law, water vests in the mineral estate grantee contemporaneous with that of the mineral whether temporarily by prospect or permanently by Discovery. There is nothing in the language of either Section One or Section Nine to authorize the state to take more than a recordation role as mining districts did as regards mining rights water appropriation, including agricultural and other priority uses.

Aesthetic uses, such as fish are not priority uses. There is nothing is this grant authorizing the state can infringe by legislating an encroachment due to fish or any other aesthetic or beneficial "value". May it be acknowledged still, to avoid irreparable harm, that the state was not granted the water but the people who are the producers for themselves and the society at large.

By the Act of January 30, 1865, states and corporations were prohibited from claiming any mineral unless expressly granted. Being mineral and water are under the mining law contemporaneous, the force and effect of the pertinent part of the 1866 Act as codified at 43 U.S.C. §§ 661, was to preclude appropriations by the state, any other decision opinion to the contrary notwithstanding. As was stated numerous times in the recent case of NOEL CANNING v. NATIONAL LABOR RELATIONS BOARD, 2013, finding unconstitutional recess appointments made by the Executive, that "In any event, if some administrative inefficiency results from our construction of the original meaning of the Constitution, that does not empower us to change what the Constitution commands. As the Supreme Court observed in INS v. Chadha, "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution" and that "early understanding of the Constitution is more probative of its original meaning than anything to be drawn from administrations of more recent vintage" to guide every state official to properly interpret and put into force and effect the laws obligating the state from their original intent, not colored by Executive or administrative fiat.

The legislature shall not regulate where Congress has spoken. The imagined harms the proposed state legislation seeks to regulate are actually title challenges the Mining Law, including water, Congress enacted requires are to be resolved between competing or affected

parties in the state courts, not the state legislature. This extends beyond mining to all conveyed land. The bill interferes with or circumvents this settled ordered process and does so without express authority in any granting acts.

Impermissible Interference with Legislative Grants of Congress.

What is a Legislative Grant, but a Present Grant, operating today. And because of the unique nature of the mineral estate unlike any other, these mineral grants, including water, are operable forever into the future, at least regarding certain granted minerals, remedies, and other property, such as water and ingress and egress. From *Leavenworth, Lawrence, & Galveston RR. Co. v. United States* (1875): [T]he rules which govern in the interpretation of legislative grants are so well settled by this court that they hardly need be reasserted. 'All grants of this description are strictly construed against the grantee; nothing passes but what is conveyed in clear and explicit language; and, as the rights here claimed are derived entirely from the act of Congress, the terms of which must be plainly expressed in the statute, and, if not thus expressed, they cannot be implied.' "It creates an immediate interest, and does not indicate a purpose to give in future. 'There be and is hereby granted' are words of absolute donation, and import a grant in *praesenti*. This court has held that they can have no other meaning; and the land department, on this interpretation of them, has uniformly administered every previous similar grant. *Railroad Company v. Smith*, 9 Wall. 95; *Schulenberg v. Harriman*, 21 id. 60.

"In construing a public grant, as we have seen, the intention of the grantor, gathered from the whole and every part of it, must prevail. "[A]nd, unless there were other provisions restraining the words of present grant, the grants uniformly were held to be in *praesenti*, in the sense that the title, although imperfect before the identification of the lands, became perfect when the identification was effected and by relation took effect as of the date of the granting act," St. Paul & Pacific R. R. Co. v. Northern Pacific R. R. ""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)"

And then we have the effect of the mining law that the courts long recognize the Acts of 1866, 1870, and 1872 as amending, is a "present grant" *"revolutionizing the whole land policy of the government, abdicating in the name of the nation its authority and jurisdiction over the richest mineral possession on the face of God's earth,*"[1] conveyed the mineral estate of the United States completely, *an absolute gift of all the mineral wealth without condition and without limitation to all citizens.*[2] It has long-since been settled that *the federal system treats the mineral estate as a proprietor holding paramount title*[3] *to its public domain and not as an attribute of* sovereignty. Standing *in no different relation to the sovereignty of the state than that of any other property which is subject to barter* and sale,[4] [5] *[t]he minerals do not differ from the great mass of*

1 The Encyclopedia Americana, 1919, Volume M Mining Laws of the United States, Page 184.

2 Page 185, The Encyclopedia Americana, 1919, supra.

3 Handbook of America Mining Law, Geo. P Costigan, Jr., 1908, Pg. 11.

4 Page 10, Moore v. Smaw 17 Cal. 199 79 Am. Dec. 123

5 American Law Relating To Mines And Mineral Land within the Public Land States and Territories and Governing The Acquisition and Enjoyment of Mining Rights in Lands of the Public Domain, Curtis H. Lindley,

property, the ownership of which may be in the United States or in individuals, without affecting in any respect the political jurisdiction of the state it has as well been settled with *that fixed and definite legislative policy* granting *its mineral lands* the Proprietor, Congress, in the name of the United States, *forever abandoned the idea of exacting royalties, instead giving free license to all citizens,*" the notion of *royalty in the product of the mines was forever* relinquished.[6]

The settled law regarding any grant, be it for mineral, water, or highway is that it is interpreted strictly, no more or less than expressed, silence not equating to expression by silence, nothing taken by implication; Any ambiguity will resolve in favor of the grantor, given the grantee's right may not be diminished, interfered, or prohibited. The Congress already granting free license, the proposed legislation purporting to require additional permits and fees will impermissibly encroach, diminish, interfere, or cause prohibition. Where Congress has given free license the state is precluded from requiring or charging for additional license, the lawful character of mining, ranching , and farming, etc., and these public necessity of water use for the purpose notwithstanding. The legislation encroaches upon the prevailing authority of Congress stated in the Supremacy Clause, and the Property Clause, notwithstanding the cession power disposal of the soil.

But Oregon has not in the past made laws in conflict, as do the current regime and Special Interest proposals purporting to trump existing prevailing state and federal laws granting the public necessity, public benefit, and public use character of the mineral estate, including water.

Past laws acknowledge, in a continuing way, by those state law enactments, such as the 1899 Oregon water law, Section 2, of the Act granting that all "having title or possessory rights to any mineral or other land, shall be entitled to the use and enjoyment of the water of any lake or running stream within the state for mining and other purposes in the development of the mineral resources of the state" "and such waters may be made available to the full extent of capacity thereof without regard to deterioration in quality or diminution in quantity, so that such use of the same does not materially affect or impair the rights of prior appropriations", such right of appropriation to miners and other lawful appropriation relating back to the Act of 1866, this state grant is fully consistent with Section 9, of that water grant. The Bill, then, is inconsistent with existing prevailing law.

To drive the point home further, since it appears the various government organs will not observe these constitutional provision in the first instance as is their self executing duty, for purpose of notice and of possible future litigation, that there is no avoidance of culpability, whether moral, ethical, or legal the Oregon Constitution specifically mentions the product of the mines but applicable to all granted lands states at **Section 18. Private property or services taken for public use.**

> Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all

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of the San Fransisco Bar Volume I, l897, Section 80.

[6] Ivanhoe Mining Co. v. Consolidated Min. Co., 102 U.S. 167. 173, 26 L.Ed. 126.

roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use. [Constitution of 1859; Amendment proposed by S.J.R. 17, 1919, and adopted by the people May 21, 1920; Amendment proposed by S.J.R. 8, 1923, and adopted by the people Nov. 4, 1924]"

Please be of note, production and possession of property for raw products is already a public use. But for the collusion evident between the branches of Oregon Government, the state will be hard-pressed to assert a higher use than necessity; The Attorney General did not. And the Bill does not nor can it declare contrary to the laws of the United States.

And then, in pertinent part, at:

Section 21. Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors. No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority;"

Consequently, with the grant of every piece of land, or water, the state has no authority or power to place any easement over granted lands without due process and compensation if it can muster the requisite power. The due process portion of this requirements could not be met by the state being that an environmental amenity or hypothetical aesthetic does not prevail against property rights or that requiring demonstrable exigence where executing municipal power. Lawful intent to comply with the takings requirements is lacking in the bill failing to provide for an assessment of the value of the property proposed to be taken with tender of that value.

State Constitutionally Constrained, No Power to Legislate or Interfere.

Oregon Constitution Article XI-D

Section 1. State's rights, title and interest to water and water-power sites to be held in perpetuity. The rights, title and interest in and to all water for the development of water power and to water power sites, which the state of Oregon now owns or may hereafter acquire, shall be held by it in perpetuity. [Created through initiative petition filed July 7, 1932, and adopted by the people Nov. 8, 1932]

Section 4. Construction of article. Nothing in this article shall be construed to affect in any way the laws, and the administration thereof, now existing or hereafter enacted, relating to the appropriation and use of water for beneficial purposes, other than for the development of water power. [Created through initiative petition filed July 7, 1932, and adopted by the people Nov. 8, 1932]

These ought to be read to be understood that the State is not empowered to interfering in any way with water or rights granted under this Article which does not include power to entertain, let alone pass, bills purporting to control water, manage an appropriation, or

appurtenant property such as the contemporaneous mineral estate property or that for farming, or ranching, or other appropriation granted under the Act of Congress of July 26, 1866, Section 9.

There is no power in the state to impose a management scheme upon a right or the published record of rights as the bill intends. The proposed legislation changes the peaceful governmental establishment of the populace. What does the legislature think it is prohibiting, regulating, permitting, and requiring fees for in these style proposed Bills that Congress has not already granted outright and not already accounted for in recording the appropriation, a state obligation, and otherwise preempted? If any such Thing could be identified, We require an opportunity to know and address it.

The Bill Criminally Converts Granted Property to That Held by Tenure Extortion.

The proposed Bill would purport the state has authority to convert a congressionally granted right of appropriation and use to some revocable tenure. This is a violation of settled water appropriation law, as well as the fiduciary duty of the state, as well as an abdication of the office required to be maintained by the legislative grant of Congress. As We have been forced to answer to the Bum's Rush of bills this session purporting authority to contravene not only settled law but state fiduciary duty, We must again remind the state officials when dealing with either minerals or water, there is no political or legal immunity; That the state, absent a found exigence, through its various departments or agencies, is treated as a mere proprietor for purposes of trespass, conversion, extortion, or other crimes against property.

Moreover, it is a felony, ORS 164.075, in the state of Oregon to harm someone in their property under color of official authority. The proposed legislation is such a felonious act. The Assembly of Jefferson Mining District is astonished that no officer in the state has to date seen fit to arrest the crimes these style bills commit. We have been required, uncompensated, to comment in opposition to these present felonies hoping beyond hope that a will yet exists to acknowledge there is supposed to be law in this country which shall be adhered to. The harm to us has already occurred, without remedy, that We, wrested from our peaceful possession must contend with those who would come to steal our law and property. The method of attack appears to be to overwhelm the property owners with felonious bills, through an obscure system, without any real notice of the threat, in the hopes that even one bill gets through the process. We are unsure how many bills We are missing while having to answer to the bills We have caught. These bills appear to have a common denominator in them, in that each attacks property rights, diminishes them to some privilege, charges the possessor for property already owned, then threatens diminishment, or liens, or obstruction to the very soil, including water, granted for the purpose of eliminating all property rights in private possession. We are also aware of Draft Legislation offered to the agencies by Special Interest having absolutely no basis in law, no power to offer a draft, nor power to change the congressional or state grants, yet entertained for the purposes of making legislation. This must stop. In analyzing this method, We find a direct correlation to that suggested in an international Programme of Action, better known as Agenda 21, or now, Future Earth, Chapter 7, specifically targeting private property rights in favor of tenure and centralized governmental control or Use of Land. This scheme, contrary to all legislative grants for the disposal of land or water, are antithetical private property rights. This is also contrary to one purpose for the Establishment of the State, to protect and secure property to its possessor. Those

who promote this scheme and artifice are committing the highest crimes against our national and state laws respecting property, and our way of Life, such as our livelihoods and economy. For this bill to render a granted property and rights to mere tenure, condition a water right appropriation required chronologically vested, and to impose an oversight fee in their maintenance with lien divestment of the property as penalty, is an unlawful and felonious conversion by the state at the instance of a third party interloper without any authority whatsoever, but highly consistent with the foreign agenda to subvert property rights. We must ask, from the Governor who referred it through the Senate president, the Legislative Council, ostensibly duty-bound to, at the very least, declare conflict with existing law, to the chairman of this committee, Where was the check and balance to save the people from the plunder this bill and these sorts of bills commit or protect them in their peace to shield them form having to address the crime against them?

The Bill May Be Enjoying Support Upon Infirm Grounds.

We have heard two disturbing notions coming from the legislative Grapevine regarding the methodology justifying this criminal assault on property and rights. The first is that the legislature intends to “damn the torpedoes full steam ahead”, or that the people can sue in the courts to reverse the legislation. The second notion, in particular to this bill, is that word has it that the Senate is enamored with the notion espoused by the Water Department, something to the effect that though one may have a water right, that does not mean a right to that water.

As to the first intention to “damn the torpedoes full steam ahead”, We will insist upon the legislator's higher moral, ethical, and constitution duties to do better than that, to avoid bringing the populace into unrest and uncertainty in causing a breach of the peace and the law. Reliance upon the courts in the matter will, as a matter of law, cause irreparable harm as does the fraudulent assertion of an emergency to remove another remedy from the people, that of referendum such that might be raised. It should be no trouble to arouse a sheriff to arrest this breach of the peace.

As to the second notion, “that though one may have a water right, that does not mean a right to that water”, where attempting to conjure into existence some agency power of control, if this were argued against an existing water right where there is plentiful water, it is a fraudulent representation. It is only true in a narrow circumstance. And therefore, it is a fraud of omission for any body to represent without notice of this narrow condition without further explanation.

This condition, that one may have a water right, but that does not mean a right to that water, can only be said to be true where one has a water right though junior to other appropriators with regard to the water supply. This would not be true in any regard where water is plentiful for all. Such a statement can only be supported from a condition of scarcity; A hallmark of a corrupt fear-based hysterical special interest influence and the property stealing international Programme of Action, Sustainable Development. The notion that one may have a right to water but not to the water can be maintained only as to junior appropriator's in times such as August until the Fall rains, where flows of water naturally are reduced, or at times of extremes, where no water falls from the sky and none makes it to the most senior appropriator. Only then could it be said that the right to water does not guarantee a right to the water, but only because that water does not exist at all for purposes of appropriation and use. The notion that all granted appropriations have no right to any water, is proven absurd, if not wrongful, through any basic review of water

appropriation case law. This notion can only be advanced as a fraud by omission to state the complete condition. As regards the water appropriation of water doctrine, anyone stating this singularly that there is no right to granted water, if intending to avoid misrepresentation, must clarify that claim exists in a condition of no water at all respecting the appropriated right. The other condition to avoid fraudulent misrepresentation would be where the term water in the statement, "that one may have a right to water but not to the water", requires the presumption of the existence of water, presumption of the chronological appropriation to that water, presumption that there exists only a junior interest relevant to a scarcity invoking the statement. And the one making the assertion thereby can maintain that there is no right to the water appropriated only in the limited sense of the junior appropriator, for someone is getting water under their right of appropriation, even if just the senior appropriator. Therefore, to avoid the misrepresentation we would have to facially accept the limited condition. But being this limited condition was not explained, any agency, i.e., from the state as trustee perspective, promoting such a notion is committing the fraud by omission to say, "that one may have a right to water but not to the water". Such an employe so asserting contrary in the presence of sufficient water that a water right does not guarantee a right to that water, ought to be removed from their capacity serving the people of the state for feloniously disrespecting the law and the granted property of the public under color of official authority. The only way to truthfully represent the position taken by the Water Department would be to declare that there is no right to the use of the water where there is no water available, whether as a junior appropriator or due to the failure of mother nature to provide water at all. To say nakedly that no one has a right to water to invent and impose an agency authority is fraud, fiduciary breach, a violative of law on many levels.

We know from before the mining law existed, mineral being contemporaneous with water, itself a mineral, that the grant of the property is the grant of the right to enjoy including the right of extraction, what is currently called "diversion" for water. As can be readily seen from the constitutional citation previously, the state has no power to declare any water its own, or by the Admission Acts, perform contrary to the water grant of congress to the public having no power not granted to it and then only so long as any law is not in conflict with the national disposal. The Senate should not be persuaded against its better and lawful judgment on this subject matter by special interest political influence or perceived opportunity.

Suggested Solution Instead of the Resort to State-caused Property Crimes.

The state may not extort fees from water appropriators to fund its departments. The exaction of fees, worse yet. Being the state, pursuant to the congressional water grant, sits, essentially, as a trustee records repository for the purpose of the water appropriation, and the mining law and by the various mining districts know well how this is efficiently and inexpensively handled, We offer a suggestion to the state better than committing extortion or resort to abusive and evasive "reason" or trustee breach exacting for the benefit of third party state departments funds to operate. Being water is contemporaneous with minerals, the appropriation provisions used for minerals would serve well the appropriations for water for all lawful uses. But for the invasion and attack through the method suggested in the international Programme of Action, this efficient recordation is so in the state with relatively peaceful results.

As this bill would impose, the Programme of Action proves no peace will be possible

where legislature contravene the wisdom of congress. We suggest a more refined return to the water grant of Congress for purposes of appropriation instead of using that appropriation as a funding stream theft of the state to fund the Department. Being trustee for the purpose of water appropriation, the state may take resort to the County Clerks, office of records. Where someone makes a water appropriation under the law, they file their claim with the county clerk, thereby setting the date of appropriation. If some time in the future there is some conflict, in absence of an established water district consented to by the parties, as with the mining law, the adverse parties seek remedy in the courts by the law of possession, i.e., the possession by best title. It should be a simple matter for a court to ascertain the best title by the grant appropriation requirements and the county record without the overburden of an addition state agency, its irrelevance notwithstanding. In this regard, the fees generated are lawful, the cost of recordation, and the Water Department may be relieved of this revenue tempting "service" demand. This reorganization would have the added benefit of removing the temptation for extortion to use granted properties to fund the bloat and bureaucracy of government. This would also, where required locally, allow private water districts to be organized of local appropriators for purposes of lawful appropriations in times of water scarcity as has been the historic and proven method.

Because Oregon is unique, in that it made the wise delineation that water may not be wasted, upon probable cause complaint, that too can be tested in the courts. This relieves the Water Department from that duty saving costly cumbersome administration shown to be inclined to disrespect water rights and the people who appropriate it. Any remaining duties such as state monitoring to improve water use could be maintained by the state but without the illegal parasitic and property trammeling opportunities now enjoyed by the Department and the state or the governor as the proposed legislation wrongly intends. We speak from experience in this wrongful intention as the state water master is known to harass miners without lawful cause over their granted non-consumptive use of water declared under Oregon Law to be a public necessity, benefit, and use. Apparently the office of the Watermaster and now the governor, apparently on the word of the Water Department director in the recent HB 2259 Committee hearing, that the Attorney General opines the state will recognize no water rights, believe they can disregard prevailing congressional authority and existing state law. The problem is, where it adversely affects property under color of official authority, to do so is a felony crime whether upon direct action or as accessory through the functions of the legislative committees, an indirect commission.

No Provision For Compensation Be Either Direct or Administrative Takings.

Oregon Constitution. Article I, Bill Of Rights

> Section 18. Private property or services taken for public use. Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use. [Constitution of 1859; Amendment proposed by S.J.R. 17, 1919, and adopted by the people May 21, 1920;

Amendment proposed by S.J.R. 8, 1923, and adopted by the people Nov. 4, 1924]

The Bill establishes proceedings under the Administrative Procedures Act, ORS 183, yet makes no provisions to meet the state's constitutional good faith obligations that “such compensation first [be] assessed and tendered;” to cover the economic harm the bill creates where adversely affecting the economic reliance on the appropriator's water right. There is no such provision for assessment and tender, showing the nefarious intent of the bill. The adverse economic harm to the miners alone will tax the state beyond measure. Not merely the economic hit to the public, but the vitality to the state and the fiscal demand. Then what about the ranchers, farmers, and other water appropriators. What of their adverse affects? Where is the assessment and tender for their harms provided in the bill? Then, Could the state assert a higher right for purposes of takings than the public necessity it has granted to these uses to more legitimize what would be a constitutional government theft of property? Where is the assessment and tender for this provision in the bill? And where is the Statement of higher right of use than a public necessity to aid a lawful takings, if the state could? If it could the Bill fails on its face.

The compensation required, being the subject matter properties are production properties, essentially, would include compensation paid to not work the land bringing it into disuse. This Bill could be called the Paid To Idle Land and Water Bill; A State mine, ranch, and farm, subsidy project; A Sustainable Development coup for Special Interest third-party theft.

The Fraud and Deprivation of Due Process of the Declared Emergency.

The emergency declaration in the bill just underscores the evidence the felons are attempting to make a clean get away depriving people of referendum and attacking property, remedy, rights, livelihood and money without due process of law or compensation, if the state could make such a claim as a trustee. Such an emergency declaration is fraud. That it harms people in their property under color of official authority is a felony. Has the government lost its good sense and morals? As best as We can ascertain, the actual emergency is the Bill itself where it threatens the peace of the state, its settled remedies for conflict, vested property rights or the method of appropriation granted by Congress, the power of which ceded by Oregon upon its admission in to the Union. These are very high level violations of law, and therefore violations of property, being evaded by those creating and fostering this or these style Bills. Jefferson Mining District is specially positioned to witness these crimes being the national Mining Law is a property law created by miners, the water rights of which contemporaneous with mineral, and neither of which were granted to the state, in fact ceded by it. The State has not power to control or create mechanisms to subvert the legislative primary disposal grants of Congress. In fact these are prohibited to the state by its own acts.

The Bill Acts to Contravene Congress and Reason To Commit Extortion.

Specific to this bill, purporting authority to take a water right vested by chronological appropriations by imposing a maintenance of the right year to year is contrary to the express grant of Congress. The state threatening extortion, where it could show a right to so impose, or

the lien upon other property of the water right holder where not paying the fee for maintaining the right, is exaction, an extortion without lawful right of authority. The state taking money for the maintenance fee where not expressly provided for in the congressional grant is a fiduciary breach and theft or unlawful control, the receipt of property taken by the failure to pay the fee extortion under color of authority for use of a third party, another felony.

Again, the state is a trustee where the object is water appropriation. Causing any interference by the state is a fiduciary breach for every act contrary to the express terms of the Legislative grant of water through the Act of 1866, Section 8, i.e., The Lode law. Whether official, through an oath or privately without the official cover, acting contrary to this prevailing grant is contrary to the terms of that grant and the laws of the United States. As the bill will destroy the peace and dignity of the nation and the state it is not an exaggeration to say it makes war upon the United States of America. This is a Third Rail condition for the state or its officers or employes or as private trespassers. The treasury will receive the deadly jolt for this willful fiduciary breach causing unlawful takings as all affected property owners will surely have grounds to sue, whether the state officially or privately its officers or employe, whether singularly or in class action, whether by cause of public or private tort or breach of fiduciary duty. And then there is the private liability to anyone shown not to have title or authority to affect title of the property adversely affected. As with the mineral estate, the water estate is one as if dealing among mere proprietors.

While the state has a sovereign capacity to protect the water within the state from encroachment to the benefit of all appropriators within the state and the states welfare and health generally, as an appropriator by way of lawful acquisitions, or by purchase of land having water rights, the state has no more rights than any mere individual. So that it does not go unsaid, to show the extent of our consideration supporting this comment, it is ever in our apprehension, a navigable water, or highway, falls into the the former capacity, though this should not change anything for purposes of this comment or the scope of the adverse affect the proposed legislation will have.

Congressionally Granted Water, Not “Waters of the State”.

It shall also be of record notice to the state that the congressional water grant of 1866 was not to the state but to the public. The state having the fiduciary duty to protect and secure the same, the bill would purport authority to contravene its trust obligations. In other words, there are no waters of the state appropriated by the congressional legislative water grant that the state may through any scheme or artifice interfere with as this bill purports to do.

There are no state-wide appropriations “held for waters of the state” which are granted and appropriated under the act of 1866, the right of appropriation of which today relates back to that act not state or individually owned rights.

To take such a general appropriation would be contrary to the congressional land disposal grants also proving the state does not own all the land within its own borders. Reference PPL Montana v. Montana, 2011. And by law, the state or a political subdivision may only own so much land as is necessary to the proper function of the government.

Fees and Underlying Statutes Are Unlawful.

The Bill intends to impose fees. What lawful service is the State purporting it is providing to criminalize a lawful act granted through the exclusive Power of Congress, in favor of issuing license and fee that the provision for fee in the Bill is lawful?

Can this committee identify where a mining district ever collected fees to give to another group of people or in excess of the cost of recording? What fees in excess of the cost of recording does the state water appropriations recorder lawfully charge in excess of the cost to record mining related or other water appropriations respecting the terms of the grant Act of Congress?

The Supreme Court holds that there can be none. Can this committee identify how a fee is levied lawfully for a previously granted property?

The Bill unlawfully expands fees for federal property grant recordings or granted uses beyond the cost of recording to fund foreign projects or the State beyond the benefit bestowed to the appropriator. By this, the State becomes a parasite on the backs of congressional grantees and their obligations penalizing them for hypothetical or imposed harms not of their making.

Recording and Permit Fees not Lawfully Imposed.

"[T]he Supreme Court defined a fee as a payment made in connection with a voluntary application to a public agency for a grant bestowing a benefit on the applicant not shared by other members of society" Union Pacific Railroad Company, *et al*., V. Public Utility Commission Of The State Of Oregon; State of Oregon, 1990, adding that "in light of its legislative history and the definition of the term "tax" by the courts, supports the conclusion that Congress did not intend that a levy of the kind imposed by the Oregon statute be included in and thus barred by the section." [emphasis added]; The Mining law contains, as well, no intention by Congress that Oregon impose levy for the property or use of the property granted, bestowing no benefit. The water grant is not a mere franchise subject to state feedom. The court continuing, That such a fee, purportedly attached "to regulate" "and mitigate the evils incident to the business" is but "a levy to collect the costs of regulation from those regulated is not to be treated as a tax". The fee "the Court held, was not a tax, but "the mere incident of the regulation of commerce". By the Oregon Parks study required in SB 606 and required by the 73rd legislative assembly, though fraudulently withheld from the legislature by the Governor, showing no harm was caused by hydraulic placer mining, our challenge as to the legality of such designations notwithstanding, there is no evil to mitigate in mining or other lawful use of water. Neither is productive use of water not in commerce, its public necessity notwithstanding.

This State, because of the unique nature of the mineral estate, is without the political power normally applicable, having no authority to regulate the congressional grant or commerce of the mineral estate or other granted uses or possession of land except to the muniment, the means of recordation, or jurisdiction to define the mineral estate or its development, or its use of water, or of any other lawful use of water, as an evil seeking mitigation for which any fee "appropriated in advance to the uses of the statute" would be valid, the statute [or proposed Bill for the same] itself therefore and thereby, is unlawful.

Rely Upon the Wisdom Ceded to Congress.

We urge, instead of the facially violative legislation of an incalculable injustice of immeasurable value reaching irreparable harm, reliance upon the Wisdom ceded to Congress for existing judicial remedy, such as the Law of Possession.

We require before further action is taken, in light of the blatant violations found as herein identified, the Bill is returned to the Legislative Council for confirmation of the lack of conflict with existing federal and state laws and to avoid future litigation for committing unlawful takings, ans so We may respond to any further inconsistencies.

We require also, because the legislative process or legislation is not due process, that prior to attempting legislative intercession any legislator or legislative council ascertain a found Authority and Jurisdiction to avoid injustice or unlawful takings, interference with livelihood, or property deprivations in the first instance or as wrongly causes us to respond today to protect our property;

Oppose the proposed legislation.

I and the Assembly of Jefferson Mining District are available to answer your questions.

Thank you for your considered lawful action to the found threat this Bill is.

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