Jefferson Mining District

The Date of March 26, 2013.

FOR THE PUBLIC RECORD

Reply to the Final Memorandum Pertaining to HR 2248 Responding to the Comment of Jefferson Mining District

Dear House Speaker Tina Kotek, Brad Witt, and the Agriculture and Natural Resources Committee Members:

The final memorandum, of the Attorney General, Memo, to Gary Lynch, dated March 19, 2013, regarding the Comment of Jefferson Mining District, Comment, continually misstates matters. This Reply cannot in the prejudicial short time allowed fully touch on all the deception in the Memo. Neither is there time or place allowing for full citation. This Reply is as straight forward as time allows and if a more full citation to the principles in law presented are desired by the legislator Jefferson Mining District will be able to provide any upon request. A review of most any mining law books and careful discernment of case law and special attention to the Mining Law itself interpreted *para materia*, as it must, is all one needs to do to see the Memo is a crime in progress.

To set the record straight, in part, Jefferson Mining District is a duly established miner's government acknowledged by Congress in the national Mining Law. It is not an organization merely called Jefferson Mining District because Ron Gibson says so, but because it is duly established under law with Authority and Jurisdiction over the territory which it oversees for the Assembly constituting the District for purposes acknowledged by and pre-existing federal mining law.

The Memo is a willful misstatement, and knowing misrepresentation of the Comment filed by Jefferson Mining District. For instance, where stating, "Mr. Gibson's essential assertion is that the State of Oregon does not have authority to regulate reclamation or other environmental issues relating to mining (except on mineral lands actually owned by the State of Oregon)", this is not what the Comment challenges nor in this limited sense. This statement in the Memo, as a number are, is a broad generality which attempts to evade crucial specifics.

The Memo misrepresents mining law as will be explained below.

The Memo misstates and then as a mere "crux" that "his argument is that all environmental regulation of mining is preempted by federal laws." The Memo fails in the first instance to answer the Comment point for point. It does this to evade the law. And the Memo contains many errors, assumptions, mischaracterizations, and fraudulent omissions that to those unlearned in mining law might believe the Memo appears plausible. Because of the very serious nature of the subject matter involved the Memo maintains at least the appearance of impropriety

if not the cause of felony where depriving people of their granted property under color of official authority upon its facially false representations while giving to the stat control of property the act of Congress of January 30, 1865, prohibited to the state and corporations.

In this regard too, the opinion mischaracterizes the granted property as "real property".

The Memo is incorrect where it states, "Mr. Gibson correctly notes that mining claims are also considered to be an interest in real property." Locatable mineral deposit claims are not a mere interest in property but exclusive possession of the soil and property, protected by the Law of Possession, 30 USC §§ 53, against all third parties, including the United States and the State.

> "The owner of such a location is entitled to the exclusive possession and enjoyment, **against everyone, including the United States itself.**
> McFeters v. Pierson, 15 Colo. 201, 22 Am. St. Rep. 388, 24 Pac. 1076, 1077; Gold Hill Q. M. Co. v. Ish, 5 Or. 104, 11 Morr. Min. Rep. 635; Seymour v. Fisher, 16 Colo. 188, 27 Pac. 240, 244; Reed v. Munn, 148 Fed. 737, 757, 80 C. C. A. 215.

In Oregon, mining claims are acknowledged to be "real estate", not mere real property which conforms to federal law, Federal mining claims are "private property" Freese v. United States, 639 F.2d 754, 757, 226 Ct.Cl. 252 cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed.2d 103 (1981); Oil Shale Corp. v. Morton, 370 F.Supp. 108, 124 (D.Colo. 1973). "**Such an interest may be asserted against the United States as well as against third parties**" (see Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963); Gwillim v. Donnellan, 115 U.S. 45, 50 (1885)) **"and may not be taken from the claimant by the United States without due compensation."** See United States v. North American Transportation & Trading Co., 253 U.S. 330 (1920); cf. Best v. Humboldt Placer Mining Co., supra.

In Oregon "real property" is defined as and interest held less than fee simple. This "real property" status as the Memo mischaracterizes is not the status granted by Congress to a locator of a valuable mineral location.

> "When rights have attached as a result of a valid location, the land becomes segregated from the public domain and the property of the locator; and the title to the land is held in trust for the claimant until patent." *(Noyes* v. *Mantle,* 127 U.S. 348,351; *Dahl* v. *Raunheim,* 132 U.S. 260, 262; *Gillis* v. *Downey,* 85 Fed. 483, 487)

The granted mineral estate is of a unique character. Though the fee title is retained in the United States the locator may hold permanently as if fee had issued, "but so long as he complies with the provisions of the mining laws his possessory right, for all practical purposes of ownership, **is as good as though secured by patent.**" *Wilbur v. U.S. ex rel. Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.* A patent does little to alter the quality of the possession.

Consequently, contrary to what the Memo attempts to mislead, the national mining law, not Mr. Gibson or the Attorney General of the State of Oregon declares the actual status of these granted properties. "Under the existing mining statutes **the title to a mining claim** does not rest entirely on possession, but it **rests upon a statutory grant**." *Oscamp v. Crystal River Min. Co. (1893) 58 Fed. 293, 296, 7 C. C. A. 233.*

Locateable mineral deposit claims are property in the fullest sense protected as if patent has issued, not mere interests in a property held less than fee simple. The paramount title is

merely the evidence of the source of the title and of not of relevance to this discussion. In continual disregard, the Memo exposes a deep ignorance in the mining law as well as a dereliction of official duty to protect the same where mischaracterizing the fullness of the federal grant disposal of property the state is duty bound to honor.

There is a lot more to the mining law than the Attorney General is letting on, or possibly even understands. Whether by guile or ignorance of the Mining Law the Memo uses deft misuse of terms to misrepresent the Comment to evade having to give an answer respecting the law.

The Memo wrongly constrains the subject matter where identifying that the courts have not ruled the state may not regulate environmental matters on "federal lands". This again, misstates the Comment and misrepresents the effect of the case law. Because the courts have not said a state may not, does not mean that in every instance it may regulate. Nor do such cases relate to all the land not "federal land", such as appropriated "public domain".

The Memo confines the discussion to "federal lands", or split estates lands. In this regard, the Memo is facially exposed to misapprehend that "some federal lands (primarily in western states) are open to the discovery," and "may also exist on lands where the federal government has transferred the surface estate to private individuals" are the same lands though wrongly described as different. The Memo fails to identify any particulars. The Comment requiring lawful and substantive answer relates first and foremost to granted exclusively possessed "public domain", including the entire surface within the limits of the location, 30 USC §§ 26, segregated from "public land", not merely "federal land", which may or may not have an environmental regulatory servitude. Referencing St. Louis Co. v. Montana Co., 171 U.S. 655, wherein it was said, "Where there is a valid mining location of a mining claim the area becomes segregated from the public domain and the property of the locator and the government's interest in the land is merely that of trustee." Note the fiduciary Relationship inherent in the conveyance to which the state of Oregon is obligated.

The Memo misstates the case of Granite Rock, as most attorneys do. Granite Rock was an aggregate operator which agreed to environmental regulations administered by the California Coastal Commission and failed to adhere to what it agreed to, not a Locatable mineral deposit grantee. The Comment of Jefferson Mining District does not address miners of any mineral class who may enter into agreements with state agencies. Jefferson Mining District successfully challenges the state to produce any authority to presume power over these granted properties is warranted. The Attorney General responds without more than an unfound, even to this late date, mere assumption of authority by the agency. The Comment recorded of public record with the legislature is directed first to protecting grantees whose expressed congressional grant does not include a presumption of environmental regulatory authority nor those miners who have no reason to relinquish rights to pursue livelihood appurtenant a congressionally granted private property. The Comment certainly successfully prevails against the Memo where the only authority cited is a misrepresented "crux" assumed by the assistant and just because the Attorney General says so. The citations are unavailing to anyone that actually knows the mining law to show any authority. Actually, any one knowing the mining law can see the deception the Memo is and intends to be, belying the Memo issues out of ignorance but willful knowing intent to deceive.

Being that the Memo incorrectly identifies Granite Rock as a primary precedent it

purports relates to the various challenges in the Comment and that this case is incorrectly applied and misinterpreted, the Memo fails to address the Comment of Jefferson Mining District challenging the authority and jurisdiction of the state and agency over valid mining claims located under the national Mining Laws culminating in the Act of 1872.

The Memo assumes, wrongly, that because "The Supreme Court concluded that these federal statutes do not expressly preempt state environmental regulations", this somehow magically grants the state authority to regulate. Only because the Memo mistreats the Granite Case can it come to this conclusion. However, as we have shown this is only the limited case not challenged by the Comment. To make this more clear, where a mineral entryman has agreed to environmental regulation, as in Granite Rock, or there is found adjacent property harm Jefferson Mining District does not contend. This condition would be left to the affected parties or the adversely affected property owners in a court of law. The Mining Law, however, allows no presumption of harm for purposes of regulatory authority, in fact, it was created to limit harm and make peace. The contrary imposition by the Attorney General is contrary to settled law. On the one hand, the legislature has provided property owners with remedy. On the other, the legislature has no authority to authorize or allow interference with property grantees or assigns absent a demonstrable exigence and only to the extent of that exigence.

The FLPMA cited, though not represented properly in the Memo, maintains many "savings clauses", fraudulently omitted which preclude interference with valuable mineral deposit locations, development, and extraction as one would expect where no express provision for interference can be identified in the mineral, water, highway disposal grant Acts of Congress. "By the terms of this section the **locator of a mining claim has a possessory title** thereto and **the right to the exclusive possession and enjoyment thereof**, and this exclusive possession and enjoyment includes **the right to work** the claim, **to extract the mineral therefrom**, the **right to the exclusive property in such mineral** as well as **the right to defend his possession**." Belk v. Meagher (1878) 3 Mont. 65, 78.

The Legislature and the Executive are advised to take special note of the last portion of that citation, "the right to defend his possession". Note that this right is without limitation.

Jefferson Mining District acts on behalf of this rights for the Assembly comprised of mineral estate grantees. The Supreme Court in Kansas v. Colorado, 1907, stated three remedies for trespass or for interference with property or rights: Mutual agreement, the courts, and force.

Jefferson Mining District is asserting the First, and the Second in presenting the settled law on the subject matter. The Attorney General and the Legislature can decide to ignore the law here and press the miners towards the final remedy for state lawlessness. The Assembly of Jefferson Mining District strongly advises against such a course of state action.

The citation to FLPMA, 43 USC §§ 1701, et. seq, Footnote 9, referencing Section 3 of that part identifies Specific Uses, such as the mining law appropriations, are saved from regulatory encroachment that, "public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act; " Mining Law is a disposal of the public lands to a specific use when discovered the rights to which relate back to the granting act, starting in 1865.

The Memo, again, shows a *para materia* ignorance where Footnote 3 combines the Locateable mineral class, 30 USC §§ 20 to §§ 54, with the salable or leaseable classes at 30 USC §§ 611 to §§ 615. The General Mining Law did not include common mineral classes or mineral acts beyond 30 USC §§ 54. Lest any body commit the same vice of these decisions that "*courts failed to differentiate between granted mineral lands and reserved mineral lands, the ones in which the government has retained a mere naked title, i.e., taking the position of a trustee for mining locator: and the other where it creates the position of landlord and tenant by the severance of the mineral rights and the surface rights, each being estate in land ans subject to separate leases*" N.P.R. Co. v. Mjelde, 43 Mont. 287, 137 Pac. 391 : Leasing Act, 41 Rev Stats, Section 437, referencing American Mining Law, Volume 1, Pages 231-232, Fn20f.

In point of fact, the 1955 Surface Resources Act makes an express distinction and exception to interference of the right of the United States to the surface to valuable mineral deposit locations:

> *(b) Reservations in the United States to use of the surface and surface resources Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof* ***(except mineral deposits subject to location under the mining laws of the United States).*** [emphasis added].

Mineral deposits subject to location under the mining laws of the United States have surface rights granted to the location the locator of which "shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their location", 30 USC §§ 26 and §§ 35. The Surface Resource Act of 1955 did not amend the surface rights of the mineral estate granted in the Act of Congress 1872, amending prior mining law.

Footnote 2 attempts to diminish the immense prevailing control over state power in its abandonment of that disposal power through the Admission Acts where passing off merely that "the association's arguments do not appear to be different from those based on the Constitution and mining laws ". First off, Jefferson Mining District did not present a "legal argument" in the Comment. Jefferson Mining District presented the law which the Memo was required to conclusively show invalid in order to provide the state and its agency authority to advance its bill before the legislature. We also note the continuing disrespect of the state contrary to the status Congress acknowledged to mining districts. Jefferson Mining District is not an "association".

The Memo its self states this where saying mining districts are not formed pursuant to state law.

Jefferson Mining District is a government of the miners lawfully and duly established, September 02, 2011. Its purpose is to protect mineral estate grantees from the very lawless actions the Memo attempts to run cover for. Secondly, there is no argument that the State has been exposed having no authority, in that, because of the Constitution and the mining law, by the Admission Acts the state ceded its power and authority. This is a different point of law than merely that an "argument" is consistent with the mining law and the Constitution as the Memo attempts to diminish the substance of the Comment. Though this admits the Jefferson Mining

District Comment is consistent with both the Constitutions and the Mining law and the Memo attempts to subvert or usurp these.

Moreover, even though the state has codified regulations to the muniment of the entryman, this does not defeat the lawful existence and purpose of any mining district the heritage of the purpose, and custom of protecting the Assembly from external threat is as viable today as any time in history. This current purpose is additionally fortified in the federal requirement and by the state through similar adoption of the mandate of Coordination, whereby Jefferson Miming District is specially positioned as a local government to witness whether or not any governmental action is consistent with existing law before any action does harm.

The Memo fraudulently omits to explain which law provides for surface mining regulation authority now purporting to move underground. The only Act which can be found relates solely to coal mining, and did not include minerals granted under the act of 1866 as amended in 1870 and finally in 1872. The Memo exhibits an embarrassing ignorance in the *para materia* interpretation of the mining law and the mineral estate. The Memo does not distinguish between mineral classes. i.e., Locatable mineral, saleable and leaseable minerals, or Common Mineral Materials, or the lands those classes may be found, and the rights appurtenant to those distinct mineral classes or lands. As stated, the Memo continually references only "federal lands", not much else. The mining law encompasses so much more. Confirming the fraudulent theme, noting Footnote 13, though wrongly citing 40 CFR, believed what was meant to be 43 CFR, is merely federal Rule regulating "federal land", prior agricultural entries for instance, or special areas, not unappropriated "public domain" as Mineral Estate Grantees exclusively possess.

In fact, Group 3700 only relates to common mineral materials under the Act of 1955, amending the Act of 1947, which claims have a Muti-Use servitude attached because these are NOT granted properties and not 1872 Locateable minerals which bear no express multi-use servitude, the surface to which, as a matter of law, is exclusively possessed by the locator, 30 USC §§ 22 to §§ 54.

Consistently, Group 3800 applies only to special areas, not public domain nor specific uses. Even these offer no basis for regulatory authority to the state or agency.

As a matter of law, the Memo confesses a complete ignorance on the distinction and consequence of the various land designations. Only by this fraudulent mistreatment can the Memo expand the authority of the state and the agency. These mineral classes must be kept distinct. Granted minerals are not Aggregate and are not Coal. Moreover, the agency purports authority to regulate mining for reason of hypothetical harm to adjacent property. There is no presumption that can be made in law to assume grantees will adversely affect adjacent property owners. And then, adjacent property owners, including the state, have other property remedies.

When one understands the surface mining act relates to open pit mineral coal mines that will need to be reclaimed then one can readily sees the limited scope of that authority which does not extend to granted Locatable mineral deposit grantees whose work the law expects continues permanently.

The Memo relies heavily on the assumption that because the Supreme Court has not ruled out state authority in the general application, that this will hold up in the specific instance.

Reliance on an assumption is not law or lawful foundation. Jefferson Mining District is

attempting to guide the state to decide better than whim and caprice to protect itself from takings claims as the district serves its duty to protect mineral estate grantees. The Memo fails to show, definitively, the authority of the state to interfere with mineral estate grantees holding under a congressional grant the power over which the state ceded to Congress. Subsequently, Congress conveyed the mineral estate to the valuable mineral estate locator.

The Statutes of Oregon have to be consistent with the laws of the United States. Merely citing to Oregon Statute proves nothing. The Comment is very clear that the statutes do not delegate to any state agency any power to regulate mineral estate grantees in their right to work or how. Those statutes do, however, indicate the agency rather than regulating the work was to aid in the fostering and encouraging all classes of mining.

As the Memo attempts to distinguish, it is irrelevant if the proposed legislation does not create a new program. Jefferson Mining District challenges the existing and merely assumed authority of DOGAMI for any generally applied program, as the proposed Bill represents. The proposed legislation will adversely affect independent miners with what amounts to a sweetheart deal by one miner and other Special Interests. This matter did not have to make legislation. The agency merely had to authorize the plan the particular miner in question applied for. The agency is wrongly using the proposed legislation to expand a challenged authority. The Memo does nothing to prove any authority is legitimate. And does not answer the found violations the Comment identifies. That environmental regulations exist in all western “public land” states does not mean those regulation are applicable or enforceable to any particular mineral claim. The Memo does nothing to alter this fact. Granted lands are dealt with on a case by case basis. So too will be the takings claims. As stated prior, the Memo has not shown any demonstrable exigence that creates a presumption for state regulatory authority at all. To do so would be in direct conflict with the laws of the United States declaring mining a public necessity, benefit, and use to be fostered and encouraged, and not the environmental crime presumed upon it that the Attorney General and Special Interest advocates. In fact, such a similar and consistent unsupportable advocacy and disregard of the *para materia* interpretation of the mining law bears the appearance of impropriety, and of undue influence. For instance, Footnote 8, the Study referenced in the referral is inadmissible by its own terms. It is not a legal document. And for good reason. It suffers similar ills as the Memo of the Attorney General. The Study is the product of a consortium of third party interlopers, disregarding law, and fabricating a reason to advance the property and producer destroying aims of Sustainable Development. The presentation by the Attorney General of this information is a breach of the state's duty to protect the property and purposes Congress granted and the state ceded to it.

If this Memo is the Attorney General's “So Sue Us”, notice, the state may well get what it wishes for beyond measure, and to the eternal embarrassment and dishonor of the people of Oregon.

The Memo denies any fiduciary duty to Jefferson Mining District. This is a multi-faceted condition wrongly dismissed by the assistant. The Memo disregards the historical significance of mining districts and to Oregon and conveniently doesn't answer that, as a matter of law, when the state made regulations defining the sufficient actions to establish the muniment of the entryman the office of registry and therefore the state became an *ex officio* deputy officer of every mining

district. The fiduciary duty to the district in one regard is to the Assembly, those mineral estate grantees that the state is duty bound to protect in their property, reference 43 USC §§ 661, regarding water rights, including minerals or the Oregon Constitution for protecting and securing property generally. By the Admission Acts, the state ceded power to the primary disposal of the soil to Congress, fiduciary duty attaching when Congress did so. In respect of this, the Admission Acts obligation to honor the disposal of the soil and the recording of those appropriation and the trust established thereby imposes the fiduciary duty upon the state to the extent of the expression of the legislative grant of Congress. An officer of the state has a fiduciary duty to act consistent with the laws of the United States. The Memo would have all believe there is no duty at all. If this is the case, then what is a State for, to disregard law? It is not Jefferson Mining District acting or suggesting contrary to the laws of the United States but a mining district witnessing the same in the state. The Memo does nothing to establish to the contrary of this dereliction of the Attorney General. As stated, that when the state legislated to "regulate the location, recording" it took on the *ex officio* deputy capacity, this regulation to the muniment did not extend to regulating working the mining claims which in all times has been to the exclusive determination of the locator. The Memo is also incorrect, state law does not determine "maintenance" the specific grant does, whether for Lode or Placer.

Being the Memo makes no definitive showing of authority of the state to regulate the actual development and extraction of mineral estate grantees, discussion of the fees is unwarranted. There is no found authority in the first instance, let alone an authority to charge a fee.

Being the Attorney General's Memo is not responsive to the law or the Comment of Jefferson Mining District, the "White Paper" presented by DOGAMI is unfound having no actually shown basis in law, but the misrepresentations of the Attorney General. Until such time as a legitimate authority is presented, Jefferson Mining District cannot offer a discussion before the lawful constraints are found upon which an educated opinion can be formed to aid in legislation not violative of existing federal or state law as the current proposed Bill will do.

In conclusion, though certainly not inclusive of every thing to discuss in the failure of the Memo, the Attorney General has a fiduciary duty to everyone to do better than the Memo misrepresents, and criminally so. The Assembly urges the legislature, having the self-executing duty to safeguard against encroachment of state obligations, Buckley infra, that it not be lulled by the Memo of the Attorney General. The Memo and actions of the Attorney General is a felony under Oregon law, ORS 164.075, were these work to harm someone in their property rights under color of authority or to transfer property possession or control to third parties, including the state.

Remember, unless expressly authorized, control or possession of the mineral estate is prohibited to the state in the Act of Congress, January, 1865. The proposed legislation intends to do just that, take control. Contrary to yet another misrepresentation of the Memo, the Comment of Jefferson Mining District is not a "legal argument". Being the Memo does not actually address the Comment, mistreats it, misrepresents it, commits frauds of omission to explain the actual mining law, uses mere inference to suggest authority and jurisdiction, does not identify and keep separate the 3 mineral classes or the land these may be found, etc., it is a bit wishful for the opinion in the Memo to say that the Comment is not well-found. The Memo itself is unfound.

The Memo is an embarrassment. Very little in the Memo, if anything, is reliable despite purporting to be so. The misstatement regarding the Mining Law is consistent with those made about the water law and shirking obligations of the state. This is expected, though no less unlawful, being minerals are contemporaneous with water; mistreating one mistreats the other, and the appropriators.

The Assembly of Jefferson Mining District urges any legislative body overseeing the proposed legislation put into effect and "serve as [the] "self-executing safeguard[s] against the encroachment or aggrandizement of one branch at the expense of the other." Buckley v. Valeo, 424 U.S. 1, 122 (1976)" by either arresting those promoting and advocating for the proposed legislation or let the proposal die in committee to save the treasury of the state from takings lawsuits that are surely to come of such dishonor of congressionally disposed property and aggrandizement of authority the state ceded to the grantee.

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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