Jefferson Mining District

The Date of March 14, 2013.

SUMMARY FOR CONTENTS OF PUBLIC COMMENT **OPPOSING** LEGISLATION
House Committee On Energy And Environment **HB 3251**

Please add this Summary Sheet and Attached Comment to the Bill Folders for HB 3251 and make this notice a part of the Public Record.

Comment Summary Subject Matter Showing **Opposition Warranted**

Comment Attached

Jefferson Mining District

The Date of March 14, 2013.
COMMENT FOR THE PUBLIC RECORD
HB 3251

Because of surprise and lack of adequate time for response to each:
Please add this token Comment and Summary to the Bill Folder for HB 3251 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.

House Speaker Tina Kotek, Representative Jules Bailey, and the Members of the House Committee On Energy And Environment:

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 HB 3251. 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.

Those of the Assembly of Jefferson Mining District vigorously OPPOSE HB 3251.

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 author 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.

HB 3251 Taxing the Treasury

We find it slightly ironic, the treasury department of the state would promote a bill which will, because of this unlawful takings it commits, subject the same treasury to takings claims.

Moreover, it appears those is state public service have failed to adhere to the constitutional requirement, that were the state intends to take property, the state must tender an offer for purposes of compensation. We find no such intention nor provision for the required tender in the bill which purports to be able to take access to highways which shall forever remain free, under an excuse of mere highest public use. The bill ignores the even higher public obligation or primary disposal of the land and water for public benefit and those of public necessity which existing laws show to be other than for recreation, aesthetic, or scenic values. Reference, 16 USC 472, or United States v. New Mexico - 438 U.S. 696 (1978).

Supremacy Clause, Property Clause, and Commerce 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.

Unlawful Takings Lawsuits Projected

Over an above the violation to the Admissions Act for Oregon, the fiduciary breach and prohibition takings of the bed and bank which is to forever remain free and open to everyone, in light of the fact that all Americans under the national mining law have right to prospect for

minerals, an activity of public necessity, the cession of which agreed to by the state in its establishment, takings claims are sure to follow. And without any disrespect to the state Jefferson Mining District would, in the spirit of thwarting official tyranny, guarding the livelihoods of fellow Americans, encourage such lawsuits. And being the state is by national law, the Act of January, 1866, precluded from possessing any part of the mineral estate unless expressly granted to it, prohibiting these prospectors from the bed and bank will constitute a compensable takings liability to the state Treasury; Why we are surprised the Treasury advocates such a bill. And though we do not believe even this can invest in the state the right to acquire the mineral estate contrary to the national mineral policy, there will be outstanding takings claims for the deprivation of access to the mineral estate which will tax the state treasury. How much are fish worth upon a hypothetical claim of harm or a mere claim of highest use. For purposes of takings claims even this assumed, though not proved standard of use may not prevail against and will not rising to defeat a public necessity. State law acknowledges the productive uses for water and of the mineral estate are a public necessity. The extension of the bill to the bed and bank is a back-handed attack on the mineral estate. We hope this committee will see this and avoid the liability to the treasury and the people of the state.

Navigable Waters Subject to Mineral Reservation of Congress.

And if Congress defining the “lands beneath navigable waters”, where such streams were not meandered, at 43 USC 1301 *et seq*. Section 1301 (a) – (f) The term “lands beneath navigable waters” does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States does not precluded State control of the bed to banks under navigable rivers of U.S. public lands, see the Act of January 30, 1865, providing that “Grants of lands to states or corporation not to include the mineral lands” to mean the mineral estate is always reserved unless expressly conveyed, precluding the states or corporations from owning the mineral estate unless expressly granted and as applicable to navigable rivers completely preempting the state's legislature from lawfully meddling with the mineral estate or the water contemporaneously conveyed to work it; Where there is bend and bank the public necessity of the mineral prospector is not ousted, unless expressly so.

Imprecise Language Evading State Duty

As we have been attempting to engage the onslaught of detrimental new bills We are disappointed in both the legislature and the legislative council's resort to imprecise language in the bills. We haven't yet decided whether this is by plan to circumvent state trust obligations to property possessors or of a lack of expertise in the subject matter. In either regard, we are embarrassed for the state and the people it purports to protect and the property it is duty bound to keep secure.

We suspect that if the legislature and legislative council were to confine the terminology used to subject matter specific specificity authorized by law these sorts of bills would not either take up the valuable resources of the legislature nor threaten private property or public interests.

How this failure to constrain the bill to applicable terminology, appears to condemn HB

3251 is in the intention of the modification to a motor vehicle statute with respect to what is termed in the bill as “bed or bank”. It is difficult to conceive that this is not a back-handed attempt to unlawfully control travel, in particular for, but not limited to, mineral prospectors, if not the general public. While we are not aware of any actual “bed and bank” in the area of Elliot State Park, though we have heard some making false claims to the “hydrologic cycle” that it might be fraudulently considered superior, we are aware that the “bed and bank”, that part identifying the extent of a navigable river, is by various federal and state laws, including the Admission Acts of Oregon, to remain forever free. Therefore, any reference in the bill to the bed or bank causing a prohibition of the congressionally granted use of the highway, bed and bank, everything within the high water or vegetative level, is to be forever free, which state “code” affected by the bill itself, ORS 801.350, expresses said highways are for travel as a matter of right. This is consistent with the congressional grant of the establishment of the highways but inconsistent with the foundational establishment authorities and other federal laws, such as the Act of 1866, Section 8, and the lack of restriction as to mode of travel, the subject matter prohibition intent of the proposed bill. In respect to these, the bill is in conflict.

Further, we find the term "recreational use" to be impossible to regulate against the more pervasive granted right of use. In other words, What will the state use to identify, to give probable cause for purpose of violation, a recreational use as opposed to a granted use. And why would a recreational use receive a lesser right of enjoyment where no title conflict exists?

Jefferson Mining District is available for consultation, if that would help stop the wrongful attacks that the class of the current proposed legislation causes.

The Bill Is An Improper Use Of The Legislature By Unworthy Third Parties To Extort Property

Together with the failure of precise use of terms, we find an exceeding troubling scheme in these bills whereby the legislature entertains bills which are promoted by those who either have no actual harm or have not made utility to existing laws for remedy for harm done. These sorts of entities appear to be wrongly using the legislature for purposes and to circumvent lawful remedy. This has the general effect of depriving the public and private interests without actual due process. As we conceive of undisclosed third party motive, and a known methodological schema, stated in terms of some hypothetical harm, these unproven foreign interests actual run cover for an ideology, contrary to existing laws and protections of property; An ideology of which Courts in the United Kingdom have determined to be a religion. The religion of Bio-centrism. This religion when imposed upon a country whose governments are to protect and secure the property of the people, is inimical to the public good, public welfare and public necessity.

As this regards HB 3251, we have obtained a copy of the original petition filed with the State Land Board which appears to form the basis for the current legislation. The ostensible need is said to be the preservation of fish. Being time is short, the prejudice we have cited earlier, to form a more thorough proof, let it suffice to say, that though fish were said to be harmed, or potentially so, it has come to our attention, through a news article, that as of as late as January 2013, the proponents of the need for a rule and now transformed into HB 3251 do not and did not in 2011, have any baseline data to support their hysterical claims; Those now advocated by the Treasurer. Two problems become apparent. One is that there is no actual cause to complain, and

two, in the unfound cause, and frankly unreasonable hysteria, to put out a fire that does not or at least cannot be found to exist, we waste precious time, trammeling over people's property and rights and embarrass the state. Regardless, this report purports to be sufficient to eventually become the bill before this committee. It is lawfully unsound. It is unreasonable. And it is inimicable to the public good and other public necessities, a legalized extortion.

The Methodological Systemic Corruption Stealing Private Property while Evading Trust Duty

The approval of a petition from the Chetco River Watershed Council by the agency and the subsequent bill referral appear to have been approved contrary to law or with respect to lawful authority, jurisdiction, title or other federal or state laws. Things the Legislative Council was duty-bound to catch and at least make a writing showing the conflicts in law. We appreciate the implication then that the Legislative Council, if not willfully so, where it fails its duties, appears to be part of the systemic corruption stealing private property, rights, and remedy.

Does the Chetco River Watershed Council lawfully exist today to haunt us and wreak havoc on our vested properties? Is the organization official, or merely one of those "sue and settle" enviro-terrorist GangGreen Groups recently making the news? Reference the news article of February 19, 2013, *"EPA Ex-boss Jackson Caught Breaking Law, Scamming U.S. Taxpayers wherein it is reported that "The Environmental Protection Agency and its* disgraced former boss Lisa Jackson *are under fire from lawmakers and activists for, among other reasons, having recently been exposed violating federal law by* using bogus identities and e-mail accounts *to coordinate* propaganda *and policy with media allies, "green" groups, and policymakers to advance the Obama administration's* radical *"environmental" agenda. Other EPA corruption is also still in the* headlines*, too, with the agency being criticized for ripping off U.S. taxpayers and foisting more unconstitutional regulations on the economy by working with extremist pseudo-environmental groups using a controversial scheme dubbed "sue and settle.""* Understand this is not an isolated incident as a review of any court docket will attest. In light of this official deception, the question arises, in light of the property rights and public access rights it violates under the excuse of the lesser important wildlife preservation, U.S. v. New Mexico, infra, where advocating a bill which is so detrimental to disposed property possessors and the general public, whether or not by the state Office fiduciary duty to protect the same, Is the Treasurer of the state, advancing similarly, a reverse Settle and Sue scheme to force a wrongful law settled by its passage requiring property owners sue the state to restore their peaceful private property possession taken for a lesser use without due process or compensation?

Caution Advised Against Allowing Lesser Interests, whether Hypothetical or Alleged to Interfere.

We respectfully advise sufficient caution to anyone believing they can undermine the mineral estate, the livelihood it provides, and the national defense or strategic supply it provides, and the national security the current proposed legislation threatens. We caution, more still, being the mineral estate is politically or ideologically neutral, being all benefit from this public necessity, to avoid deciding this matter upon Party or ideological lines; Anticipated presentations of pseudo science or of other emotionally charged ideologies is not any authority for the state

legislature to challenge Congress, especially where both have made remedy for found private harms where the mineral estate is concerned, i.e., the Law of Possession.

Lack of Basis to Consider Any Bill or By Emergency Whether or not Affecting Granted Property

And being as of late as January, 2013, the Chetco River Watershed Council was seeking funds to continue to exist and to continue research to establish baselines, then how did the organization, however lawfully disposed, come to an objective determination for purposes of a petition requiring a rule to control certain activity at the "bed or bank"? How is something restored or needing protection what has not been shown need existence for purposes of mitigation, i.e., "restore salmon habitat"? Let alone the Administrative financial liability to the state for any regulatory imposition adversely affecting the economic interest of those concerned if a harm could be found, the lack of objective proof for either the existence or the harm, was recently exposed by the Curry Coastal Pilot through the report entitled, "Chetco River Watershed Council struggling to stay afloat":

> *The Chetco River Watershed Council is down to its last $300 since the South Coast Coordinating Watershed Council (SCCWC) severed its relationship and ceased funding the Brookings-based council last May.*
>
> *That could leave important studies in the Chetco River – including water-temperature monitoring critical to coho salmon, and that is in its fourth of five years – in limbo.*
>
> *The Chetco River Watershed Council (CRWC) is trying to establish a baseline of information regarding water temperatures to help it obtain grant funds to restore salmon habitat – one of the watershed's primary goals.*

http://www.currypilot.com/News/Local-News/Chetco-River-Watershed-Council-struggling-to-stay-afloat

Regarding the Document "Request for consideration to initiate rule-making in response to a request by the Chetco River Watershed Council" submitted for the regular meeting of 12/ 13/ 2011, which purportedly supported the agency approval and for which HB 3251 may be based, or as it might affect all "bed or bank" or the Elliot state park, regarding the pictures in the petition purporting to show a harm needing mitigation, obviously there isn't going to be salmon habitat in any highway through the creek being any travel compacts the gravel beyond acceptable use for fish. And being, that fish exist despite this infinitesimal intrusion and even with all the other activities, fish still exist and flourish in the highway river. So the picture of the vehicle in the water shows a highway actually saves the salmon habitat by limiting travel to the cross-highway intersection, landed and water, and not inadvertently over salmon habitat, also known as and limited to salmon rearing beds.

Moreover, we do not find any prevailing authority to condition granted property enjoyment for hypothetical "stressors" due to "Human impact", the fact that any such found impact may still not interfere with a congressionally granted use of property, and all the

environmental laws agree on this part, notwithstanding. In consequence of the lack of found "event or circumstance that causes or threatens widespread loss of life, injury to person or property, human suffering or financial loss", the assertion that this bill declares an emergency is fraudulent.

In any regard, the state has no authority, and HB 3251 would be in violation, to close, condition, or diminish any vested ingress and egress granted by Congress HR 365, 1866, which was accepted by the state as a public road, Oregon HB 208, 1901, whether on state land or bed to bank.

Existing State Law Remedy For Highway Alteration, Modification Negating Need of HB 3251

On those portions which might be able to be altered or modified, if the state would like to change any road, there is a process by which it can resort to either alter the current highway to a more acceptable form or divert or replace the highway by the county process provided by state law, ORS 368, to the exclusive jurisdiction of the county, that the public shall have input upon either the alteration or the diversion to ensure no underlying property rights are violated, ORS 368, or unintended consequences occur to the vested public right to travel upon the granted highways as established and accepted under national and state laws.

HB 3251 Evades Current Protections Provided by State and Federal Laws And of Title

Further, being the state is pre-empted from interfering with granted ingress and egress, where Rule-making might affect mineral interests, including water, the affected property possessors are to be consulted with by the State agency as required by ORS 517. Ingress and egress to mineral lands is a covered as is the granted mineral estate reserved to the prospective grantees pursuant to the acts of 1865, one Act of that year relating to the reservation of minerals from state or corporation possession absent an express grant, the other relating to miner's Title, and additionally, the 1866 mineral grant, the 1870 act extending the grant to placers, and the 1872 act clarifying and expanding the scope of the grant to include all valuable mineral deposits. And as discussed previously through so-called navigable waters, the bed and bank, these are by the Admission Acts, allowing Oregon into the Union, the highways to remain forever free to travel. Therefore, title to the mineral estate on state lands, so-called, will have to be determined before HB 3251 can be said to not adversely affect existing trust property protected by federal law where a navigable river does not exist.

The Chetco River Watershed Council as well as the state, whether as an accessory after the fact or in direct commission, will have to show higher title to the land and water than what is granted by Congress regarding the water and mineral and ingress and egress to avoid the appearance of committing fraud, felony extortion, and conversion of national trust or public or private property.

State Duty: Takings Are Not Vindicated by Non-Uses, such as Wildlife Preservation

With respect to explaining the prevailing purpose for which land was disposed by

congress, we reference an important court case the following compiled principles of the decision of which have never being overturned. This case is important because it also shows that the State plays an integral part in protecting what Congress has caused by its power of primary disposal, as ceded to it by the State when accepted into the Union. The United States v. New Mexico - 438 U.S. 696 (1978) decision states, “The State District Court held that the United States, in setting aside the Gila National Forest from other public lands, reserved the use of such water "as may be necessary for the purposes for which [the land was] withdrawn," but that these purposes did not include recreation, aesthetics, wildlife preservation, or cattle grazing. The United States appealed unsuccessfully to the Supreme Court of New Mexico. *Mimbres Valley Irrigation Co. v. Salopek*, 90 N.M. 410, 564 P.2d 615 (1977). We granted certiorari to consider whether the Supreme Court of New Mexico had applied the correct principles of federal law in determining petitioner's reserved rights in the Mimbre. 434 U.S. 1008. We now affirm.” The decision goes on to instruct, “the national forests were not to be "set aside for non-use," 30 Cong.Rec. 966 (1897) (Cong. McRae), but instead to be opened up for any economic use not inconsistent with the forests' primary purposes.” ; “As noted earlier, the Organic Administration Act of 1897 specifically provided: "All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, *or under the laws of the United States and the rules and regulations established thereunder.*"”; “in setting aside the Gila National Forest from other public lands, reserved the use of such water "as may be necessary for the purposes for which [the land was] withdrawn," but that these purposes did not include recreation, aesthetics, wildlife preservation, or cattle grazing.”; “The purpose, therefore, of this bill is to maintain favorable forest conditions, without excluding the use of these reservations for other purposes. They are not parks set aside for non-use, but have been established for economic reasons."

We point this citation out to further show, that the purpose of wildlife preservation of fish, while important in one context is not the highest and best use of the land or as Congress intended it would be disposed and the state is duty-bound to protect. This also highlights the failure of the Bill to honor this public necessity where it follows that to protect a lesser use, higher necessities will be unlawfully constrained. It follows, then, any land or water not in actual possession of the State cannot be regulated as the bill purports. Any reason short of municipal power needs and then only short -lived to the exigence would be an unlawful State imposition by the state, whose fiduciary duty is to the primary disposal power ceded. Protecting fish is not that exigence, or one which cannot be more reasonably considered and short of committing an unlawful takings.

Whether in its Individual Capacity or Sovereign Capacity the State is without Power to Interfere

As to the state in its public trust capacity, we do not understand any power to contravene federal laws, or reason. As to the State in its individual capacity, as concerns State land and the public treasury, we do not see the reason or efficacy of managing its property to a less than optimal level precluding valuable economic benefit, such as mineral development or access to it, for some perceived hypothetical harm such as is found in the current hysteria regarding fish. Oregon was made by mining. Hydraulic Miners and fish swim and work together. In all that time the miners, as the fish, are still vital in their respective nature though fish survive the muddy waters of the winter floods far better than the miners. We've never seen a fish huddled near a fire to keep warm after a winter days work in storm-chocked waters. There is no reasonable belief

that can be sustained to the contrary that granted property and the vital work of people are in competition or detrimental to each and there is certainly no proof of the fact to the contrary in the record to rescue the proposed bill.

Whether through its public trust capacity or as an individual land proprietor, the Assembly of Jefferson Mining District urges this esteemed committee representing the State, it's obligations and duties, bring respect for the law and property back into vogue. If there is still a will to consider it, send the Bill back to the Legislative Council that the public obtain notice of any conflicts of law for consideration, its actual fiscal and economic impacts, including lawsuits for unlawful takings, and for further and more informed comment. Better, simply set aside or oppose this Bill for the wrongfulness that it facially appears, as herein shown, however prejudicially constrained in our time and opportunity to more fully respond. 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 lack of existing remedy; that any legislator forebear accepting a bill proposal until exhaustion of existing or mandated remedies, such as resort to those provided for nuisance, waste, or trespass, or the Law of Possession, designed to avoid injustice or unlawful takings, interference with livelihood, or property deprivations giving remedy only to those deserving of it;

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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