

1 Miner T.W. Arman
2 Two Miners, Owner/Operator, grantee & locator.
3 17829 Ranchera Lane, Shasta Lake City 96019
4 530-275-4550, fax 530-275-4559
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8 **INTERVENTION IN THE UNITED STATES OF AMERICA**
9 **EASTERN DISTRICT COURT OF CALIFORNIA**

10	} Civ. 2:91-cv-00768- USCA No. 09-17411,
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12	} USCFC No. 09-207 L
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14	} INTERVENTION OF RIGHT, VOID & VACATE
15	
16	} PETITION FOR EMERGENCY REVIEW
17	
18	} ORDER FOR CONSOLIDATION OF COURTS
19	
20	} WRONGFUL TAKING, FALSE PRETENSES, &c.
21	
22	} <i>INTERVENTION IN CAMERA STELLATA</i> , TRUSTS
23	
24	} SECURITY AND COLLATERAL. CLAYTON ACT
25	
26	} <i>Qui tam; in camera stellata: audacibus annue coeptis;</i>
27	
28	} WITH VERIFICATION BY AFFIDAVIT, DANGER
	} FRAUD UPON THE COURT;
	} TANEY, MENDOZA, BRANNON, & MARSHALL
	} APEX LAW ACTION, REMISSION, REVERSION
	} LIEN & FORECLOSURE ON PIRACY

Complaint in Intervention. Writ of Right, Writ of Possession, POSSE: No. 2:91-cv-00768-JAM-JFM
QUO WARRANTO INCIDENTAL AND PEREMPTORY ADMINISTRATIVE MANDAMUS

1 **INTERVENTION OF RIGHT, REINSTATEMENT AND CONSOLIDATION**

2 We consider a question that has split the federal courts: May a non-settling PRP intervene in litigation
3 to oppose a consent decree incorporating a settlement that, if approved, would bar contribution from
4 the settling PRP? We join the Eighth and Tenth Circuits in holding that the answer is “yes.”
5 **in looking at the substance of the matter, they can see that it "is a clear, unmistakable infringement-**
6 **ment of rights secured by the fundamental law." Booth v. Illinois, 184 U.S. 425, 429.**

7 **ABSENCE OF DELECTUS PERSONAE**

8 I have received copies by fax of motions and orders from your court and most recent correspondence
9 from John Hutchens such as the following. Your court is a manifest injustice in error *coram vobis*.

10 **TO THE CLERK OF THE COURT MR. HARRY VINE AND JUDGE JOHN MENDEZ**
11 **ERROR AND MISTAKE OF IDENTITY, FATAL DEFECT OF SERVICE, FRAUD JUDGE**

12 Dear Mr. Harry Vine,

13 I received an envelope at P.O. box 182, Canyon, Ca. 94516, but apparently addressed to Mr. T.W.
14 Arman. As you know, Mr. Arman has been the subject of litigation in your Court since 1991, so you
15 should be able to address correspondence to him without my assistance.

16 As this is not the first time I have informed you of this matter, I assume no responsibility for your
17 failure to effect service upon Mr. T.W. Arman in these matters.

18 That said, I would like to take this opportunity to inform you of some other corrections that need to
19 be made to your court that you should be aware of.

20 First, there appears to be some confusion in your court concerning ARMAN. Your court continues to
21 oppress Mr. T.W. Arman regarding certain mine drainage at Iron Mountain Mine, which is actually
22 the result of the actions of ARMAN, “archaeal Richmond Mine acidophilic nanoorganisms”, so
23 named by Dr. Jillian Banfield of the University of California at Berkeley, and if you would have ad-
24 dressed your summary judgment to ARMAN at this address, would probably have been correct.

25 As the curator for the College of the Hummingbird and the Hummingbird Institute, and at the behest
26 of Mr. T.W. Arman, the Arman Mines Institute, the Arman Mines Ministry of Natural Resources, the
27 Arman Mines Hazard and Remediation Directorate and Disaster Assistance Directorate, it is my duty
28 as resident expert to convey to you the facts concerning allegations of ‘hazardous’ substances.

1 I read with interest the partial summary judgment of Judge Mendez and can only conclude that your
2 court lacks even one scintilla of common sense or capacity, has been entirely brainwashed by estab-
3 lished beliefs of environmental religion, or are under a witches spell. Come to IMMI and walk it off.

4 Since there are no hazardous materials at Iron Mountain Mines we wish you would stop demonizing,
5 libeling and slandering the good name of Iron Mountain Mine and Mr. T.W. Arman, as these damages
6 continue to mount against the United States of America State of California and your court.

7 Furthermore, since Mr. T.W. Arman has been trying for years to supply his minerals to farmers, gar-
8 deners, landscapers, horticulturalists, and others who work in agricultural enterprises that provide our
9 food and sustain our environment, and it is well documented that minerals are necessary, for instance:

10 **“Minerals in the soil control the metabolism of plants, animals and man.**

11 **All of life will be either healthy or unhealthy according to the fertility of the soil.” This was a**
12 **statement made by Dr Alexis Carrel, Nobel Prize Winner, in 1912. Almost a hundred years**

13 **later, agriculturist and writer, Graham Harvey, wrote in The Daily Telegraph , 18 February**

14 **2006: “Britain's once fertile soil has been systematically stripped of its crucial minerals by in-**
15 **dustrial farming, leaving our fruit and vegetables tasteless and a nation in chronic ill health.”**

16 **William Albrecht (1896-1974 Illinois), referred to as the Father of Soil Research for his pio-**
17 **neering studies of the effects of infertile soil on plants and animals, warned in 1930s that if the**
18 **land was not remineralised, there would be a massive increase in human degenerative diseases.**

19 Therefore, we are of the opinion that your actions are an act of aggression and war crime of attrition
20 on us. Please void and vacate, grant us intervention, remission, reversion, & detinue sur bailment.

21 In fact our minerals were naturally distributed by the cycles of the seasons and the annual flooding
22 that for half a million years fertilized the great valleys of California. In 1943 the United States of
23 America State of California constructed the Shasta dam forever destroying this process, at the same
24 time killing all the native anadromous (invasive and migratory species) such as Chinook Salmon of
25 the McCloud river that were propagated around the world by the United States Baird Hatchery.

26 Now this court has apparently tried to blame Mr. T.W. Arman for these fisheries demise.

27 We really must take exception to the federal government perpetration such a heinous deception.

28 That you and your court aid and abet the perpetrators of this villainy is despotic and alarming.

1 **MOTION OF THE RELATOR FOR SUPERSEDEAS & CONSOLIDATION**
2 **PURSUANT TO RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

3 “Where a court failed to observe safeguards, it amounts to denial of due process of law, court is de-
4 prived of juris.” Merritt v. Hunter, C.A. Kansas 170 F2d 739.

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

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

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

21 **CORRUPTION AND RACKETEERING**

22 The division of the United States into federations of equal force was decided long before the Civil
23 War by the high financial powers of Europe. These bankers were afraid that the US, if they remained
24 as one block, and as one nation, would attain economic and financial independence, which would up-
25 set their financial domination over the world. Otto von Bismark, Chancellor of Germany 1876
26 All the perplexities, confusions, and distresses in America arise, not from defects in their constitution
27 or confederation, nor from want of honor or virtue, as much from downright ignorance of the nature
28 of coin, credit, and circulation. John Adams, letter to Thomas Jefferson, 25 August 1787

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

4 Your court facilitated the theft of the Superfund Trusts at Iron Mountain by the fiduciary and trustee
5 and contractor AIG, therefore you are personally responsible for replacing the security and collateral.

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

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

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

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

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

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

25 ...But it will not follow...that acts of...[the federal government] which are NOT PURSUANT to its
26 constitutional powers, but which are invasions of the residuary authorities of the..[the States], will be-
27 come the supreme law of the land. These will be merely acts of usurpation, and will deserve to be
28

1 treated as such...[Art. VI, cl. 2] EXPRESSLY confines this supremacy to laws made PURSUANT
2 TO THE CONSTITUTION ... [emphasis in original]

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

5 ...would not be the supreme law of the land, but a usurpation of power not granted by the Constitu-
6 tion....

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

13 It is not ...a mere possibility of inconvenience in the exercise of powers, but an immediate constitu-
14 tional repugnancy that can ...alienate and extinguish a pre-existing right of sovereignty [in the States].
15 (4th para)

16 The necessity of a concurrent jurisdiction in certain cases results from the division of the sovereign
17 power; and the rule that all authorities, of which the States are not explicitly divested in favor of the
18 Union, remain with them in full vigor...[This]is...clearly admitted by the whole tenor of
19 the...proposed Constitution. We there find that, notwith-standing the ...grants of ...authorities [to the
20 federal government], there has been the most pointed care in those cases where it was deemed im-
21 proper that the like authorities should reside in the States, to insert negative clauses prohibiting the
22 exercise of them by the States...[Art. I, Sec. 10] consists altogether of such provisions. This circum-
23 stance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of
24 the body of the...[proposed Constitution], which...refutes every hypothesis to the contrary. (5th para)

25 **The People ex. Rel. Hutchens, moves this Court, pursuant to Rule 42(a) of the Federal Rules of**
26 **Civil Procedure, to consolidate the following cases: Civ. 2:91-cv-00768- USCA No. 09-17411, No.**
27 **09-70047, USCA No 09-71150 , USCFC No. 09-207 L. TRIAL OF THE UNITED STATES OF**
28 **AMERICA STATE OF CALIFORNIA COERCIVE MONOPOLY FRAUD FALSE CLAIMS.**

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

- 3 1. The cases involve common questions of law. All causes of action allege that the usurpation, inva-
4 sion, and occupation of Iron Mountain Mine violates Section 7 of the Clayton Act, as amended, 15
5 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. and general mining law.
- 6 2. The cases involve common questions of fact because they arise from the same factual situation.
- 7 3. Judicial convenience and economy will be promoted by consolidation of the actions. Consolidation
8 will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid un-
9 necessary costs to the defendants, the plaintiffs in the actions, witnesses who would otherwise be re-
10 quired to testify in two cases, and this Court.
- 11 4. Consolidation will not delay the final disposition of this matter.

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

13 *Held:* The reference to “administrative” reports, audits, and investigations in §3730(e)(4)(A) encom-
14 passes disclosures made in state and local sources as well as federal sources. Pp. 4–21.

15 **LEGAL AUTHORITY**

16 ... “In the mining partnership those occurrences make no dissolution, but the others go on; and, in
17 case a stranger has bought the interest of a member, the stranger takes the place of him who sold his
18 interest, and cannot be excluded. If, death, insolvency, or sale were to close up vast mining enter-
19 prises, in which many persons and large interests participate, it would entail disastrous consequences.
20 From the absence of this *delectus personae* in mining companies flows another result, distinguishing
21 them from the common partnership, and that is a more limited authority in the individual member to
22 bind the others to pecuniary liability. He cannot borrow money or execute notes or accept bills of ex-
23 change binding the partnership or its members, unless it is shown that he had authority; nor can a gen-
24 eral superintendent or manager. They can only bind the partnership for such things as are necessary in
25 the transaction of the particular business, and are usual in such business. *Charles v. Eshleman*, 5 Colo.
26 107; *Shillman v. Lachman*, 83 Am Dec. 96, and note; *McConnell v. Denver*, 35 Cal. 365; *Jones v.*
27 *Clark*, 42 Cal. 181; *Manville v. Parks*, 7 Colo. 128, 2 Pac. 212; *Congdon v. Olds*, 18 Mont. 487, 46
28 Pac. 261. 29 S.E. 505. In fact, it is a rule that a nontrading partnership, as distinguished from a trading

1 commercial firm, does not confer the same authority by implication on its members to bind the firm;
2 as. e.g. a partnership to run a theater or other single enterprise only. Pease v. Cole, 53 Conn. 53, 22
3 Atl. 681; Deardorf's Adm'r v. Tacher, 78 Mo. 128; Smith, Merc. Law, 82; T Pars. Partn. § 85; Pooley
4 v. Whitmore, 27 Am. Rep. 733.

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

6 A mining partnership is a nontrading partnership, and its members are limited to expenditures neces-
7 sary and usual in the particular business. Bates, Partn. , § 329. Members of a mining partnership, hold-
8 ing the major portion of the property, have power to do what may be necessary and proper for carry-
9 ing on the business, and control the work, in case all cannot agree, provided the exercise of such
10 power is necessary and proper for carrying on the enterprise for the benefit of all concerned. Dough-
11 erty v. Creary, 89 Am. Dec. 116.

12 These principles settle much of this case. The demurrer was properly overruled, because there was a
13 partnership, and equity only has jurisdiction to settle partnership accounts. 5 Am. & Eng. Dec. Eq. 74;
14 17 Am. & Eng. Enc. Law, 1273. * * * **Justice Brannon**

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

26 **FROM CONGRESSMAN WALLY HERGER'S WEBSITE**

27 Private property ownership is a fundamental right. Indeed, the ability to own and use property spurs
28 innovation and entrepreneurship and is a cornerstone of our prosperity and high standard of living.

1 The Fifth Amendment famously protects our property rights from undue government interference stat-
2 ing, property shall not "be taken for public use, without just compensation." This amendment is also
3 joined by the Fourteenth Amendment which together protects citizens from government's taking of
4 private property "without due process of law."

5 SUPERSEDEAS & CONSOLIDATION

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

8 CONSPIRACY

9 July 26, 2010

10 EPA Releases Rulemaking Guidance on Environmental Justice

11 WASHINGTON -- The U.S. Environmental Protection Agency (EPA) is releasing an interim guid-
12 ance document to help agency staff incorporate environmental justice into the agency's rulemaking
13 process. The rulemaking guidance is an important and positive step toward meeting EPA Administra-
14 tor Lisa P. Jackson's priority to work for environmental justice and protect the health and safety of
15 communities who have been disproportionately impacted by pollution.

16 "Historically, the low-income and minority communities that carry the greatest environmental bur-
17 dens haven't had a voice in our policy development or rulemaking. We want to expand the conversa-
18 tion to the places where EPA's work can make a real difference for health and the economy," said
19 EPA Administrator Lisa P. Jackson. "This plan is part of my ongoing commitment to give all com-
20 munities a seat at the decision-making table. Making environmental justice a consideration in our
21 rulemaking changes both the perception and practice of how we work with overburdened communi-
22 ties, and opens this conversation up to new voices."

23 The document, Interim Guidance on Considering Environmental Justice During the Development of
24 an Action, seeks to advance environmental justice for low-income, minority and indigenous commu-
25 nities and tribal governments who have been historically underrepresented in the regulatory decision-
26 making process. The guidance also outlines the multiple steps that every EPA program office can
27 take to incorporate the needs of overburdened neighborhoods into the agency's decision-making, sci-
28

1 entific analysis, and rule development. EPA staff is encouraged to become familiar with environ-
2 mental justice concepts and the many ways they should inform agency decision-making.

3 EPA is seeking public feedback on how to best implement and improve the guide for agency staff to
4 further advance efforts toward environmental justice.

5 To view the interim guidance and submit feedback:

6 <http://www.epa.gov/environmentaljustice/resources/policy/ej-rulemaking.html>

7 More information on environmental justice: <http://www.epa.gov/environmentaljustice/>

8 Our government... teaches the whole people by its example. If the government becomes the law-
9 breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites an-
10 archy.

11 The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning but
12 without understanding.

13 Those who won our independence... valued liberty as an end and as a means. They believed liberty to
14 be the secret of happiness and courage to be the secret of liberty.

15 Experience teaches us to be most on our guard to protect liberty when the government's purposes are
16 beneficent.

17 If we desire respect for the law, we must first make the law respectable.

18 In the frank expression of conflicting opinions lies the greatest promise of wisdom in governmental
19 action.

20 Fear of serious injury alone cannot justify oppression of free speech and assembly. Men feared
21 witches and burnt women. It is the function of speech to free men from the bondage of irrational
22 fears.

23 Those who won our independence... valued liberty as an end and as a means. They believed liberty to
24 be the secret of happiness and courage to be the secret of liberty.

25 To declare that in the administration of criminal law the end justifies the means to declare that the
26 Government may commit crimes in order to secure conviction of a private criminal would bring ter-
27 rible retribution.

1 We can have democracy in this country, or we can have great wealth concentrated in the hands of a
2 few, but we can't have both.

3 The most important political office is that of private citizen.

4 That the existing unemployment is, in large part, of the gross inequality in the distribution of wealth
5 and income which giant corporations have fostered; that by the control which few have exerted
6 through giant corporations, individual initiative and effort are being paralyzed, creative power im-
7 paired and human happiness lessened; that the true prosperity of our past came not from big business,
8 but through the courage, the energy and the resourcefulness of small men; that only by releasing from
9 corporate control the faculties of the unknown many, only by reopening to them the opportunities for
10 leadership, can confidence in our future be restored and the existing misery overcome; and that only
11 through participation by the many in the responsibilities and determinations of business, can America
12 secure the moral and intellectual development which is essential to the maintenance of liberty.

13 - **Justice Louis D. Brandeis**

14 **JULY, 2010: MR. T.W. ARMAN & IRON MOUNTAIN MINE COMMUNITY NOTICE OF**
15 **LODGING CRIMINAL TRESPASS ON PRESIDENT OBAMA - GOVERNOR**
16 **SCHWARZENEGGER - ATTORNEY GENERALS BROWN AND HOLDER - CONGRESS -**
17 **CALIFORNIA - EPA - DOJ - CVRWQCB - CAL FED - CAL DTSC - UNITED STATES**
18 **EASTERN DISTRICT COURT SACRAMENTO NATURAL RESOURCE TRUSTEES -**
19 **HOMELAND SECURITY DEPT. OF INTERIOR - BUREAU OF LAND MANAGEMENT -**
20 **CH2MHILL - AISLIC - IRON MOUNTAIN OPERATIONS, LLC - AIG CONSULTANTS -**
21 **AIG - BAYER CROP SCIENCES - FEMA ASTRAZENECA - SANOFI/AVENTIS - JARDINE**
22 **MATHESON; FRAUDS, THIEVES, AND LIARS, JOINT AND SEVERAL TRESSPASSERS,**
23 **PIRATES, ENSLAVERS; EJECTMENT:**
24 **SHASTA COUNTY SHERIFF - POSSE FOR TRESPASS OF TREASON AND MISPRISON**
25 **OF FELONY WRIT OF POSSESSION UPON ADVERSE CLAIMS TRESSPASSERS OF**
26 **PATENT TITLE; EXTORTION; FRAUD; DECEIT; MALICIOUS AND ABUSIVE**
27 **NEGLIGENT ENDANGERMENT; ESTABLISHMENT OF RELIGION AND SLAVERY;**
28

1 **CONSPIRACY; EVIL UPON THE PUBLIC TRUST; APEX LAW AGGRAVATED**
2 **LARCENY OF MINING COMPANY SECURITY & COLLATERAL LR10-20762**
3 **INNOCENT PRISONERS OF THE EPA - DOJ SINCE 1983**
4 **FREE MR. T.W. ARMAN & IRON MOUNTAIN MINES, INC.**

5 Administrative - EPA Order 3120.1b Scientific misconduct, fabrication or knowing falsification of
6 data, research procedures, or data analysis is an offense which can result in immediate removal/ Sus-
7 pension and Debarment / Civil Sanctions / Fines / Local AUSA Must Decide If Fraud Meets Crimi-
8 nal Prosecution Threshold / Culpability / Harm

9 Laboratory Fraud, Title 18 United States Criminal Code; Is It Criminal or Civil?

10 Fraud - 18 USC 1341 - 1343 , PROCEDURAL FRAUD, MEASUREMENT FRAUD

11 False Statements - 18 USC 1001

12 Conspiracy - 18 USC 371

13 Concealment of a felony - 18 USC 4 (misprision)

14 False Claims - 18 USC 287

15 Obstruction of Justice - 18 USC 1505 Consequences: *Ferro incumbere*.

16 Penalties up to 20 years imprisonment for destroying, concealing or falsifying records with intent to
17 obstruct or impede a legal investigation

18 "Government is not reason; it is not eloquence; it is force. Like fire; it is a dangerous servant and a
19 fearful master." - George Washington

20 **MILITIA & POSSE - LOCKE & LODE!**

21 I believe that you should provide this JUDICIAL order because:

22 (A) I am not a contributor to the ‘hazardous’ substances that are alleged but have never been found at
23 my facility or the toxic affects of the ‘hazardous’ substances not found at my facility,

24 (B) I am the owner of the real property on which the facility is located and I did not conduct or per-
25 mit the generation, transportation, storage, treatment, or disposal of any ‘hazardous’ substance at the
26 facility; and I did not contribute to the release or threat of release of a ‘hazardous’ substance at the
27 facility through any action or omission.

1 I am seeking your assistance in promoting “cooperative conservation”, as provided for in your Ex-
2 ecutive Order No. 13352, and in accordance with the purposes expressed therein.

3 As used in this order, the term “cooperative conservation” means actions that relate to use, enhance-
4 ment, and enjoyment of natural resources, protection of the environment, or both, and that involve
5 collaborative activity among Federal, State, local, and tribal governments, private for-profit and non-
6 profit institutions, other nongovernmental entities and individuals.

7 The last reply to my request, dated May 1, 2008, and signed by Kathleen Salyer , Chief of the Site
8 Cleanup Branch of Region IX of the EPA, states that “businesses and individuals are not eligible for
9 EPA technical assistance under the provisions of 6913 of RCRA.”

10 Clearly my request has been entirely misunderstood, as I believe that it is the EPA that is in need of
11 assistance under the provisions of 6913 of RCRA.

12 According to the state supreme court, “[i]t is misconduct... to elicit or attempt to elicit inadmissible
13 evidence... Because we consider the effect of the prosecutor's action on the defendant, a determina-
14 tion of bad faith or wrongful intent by the prosecutor it is not required for a finding of prosecutorial
15 misconduct.” (People v. Crew (2003) 31 Ca) The role of the prosecutor differs significantly from
16 that of others who practice law, including criminal defense lawyers.

17 “ A Prosecutor is held to a standard higher than that imposed on other attorneys because of the
18 unique function he or she performs in representing the interests, and in exercising the sovereign
19 power, of the state. ... the prosecutor represents “a sovereignty whose obligation to govern impar-
20 tially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal
21 prosecution is not that it shall 'win a case,' but that justice shall be done.” (Berger v. United States
22 (1935) 295 U.S. 78, 88.) ” (People v. Hill (1998) 17 Cal.4th 800, 820.)

23 “Prosecutors have a special obligation to promote justice and the ascertainment of truth. ... ‘The duty
24 of the attorney general is not merely that of an advocate. His duty is not to obtain convictions, but to
25 fully and fairly present... the evidence...’ ” (People v. Kasim (1997) 56 Cal.App.4th 1360, 1378.)

26 “The prosecutor's job isn't just to win, but to win fairly, staying well within the rules.” (United States
27 v. Kojayan (9th Cir. 1993) 8 F.3d 1315, 1323.) “As an officer of the court, the prosecutor has a heavy
28 responsibility... to the court and to the defendant to conduct a fair trial ...” (United States v. Esca-

1 lante (9th Cir. 1980) 637 F.2d 1197, 1203.)
2 Federal decisions addressing void state court judgments include (Kalb v. Feuerstein (1940) 308 US
3 433, 60 S Ct 343, 84 L ed 370; Ex parte Rowland (1882) 104 U.S. 604, 26 L.Ed. 861:) "A judgment
4 which is void upon its face, and which requires only an inspection of the judgment roll to demon-
5 strate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the
6 power to do so exists." (People v. Greene, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448].) "If a court
7 grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that
8 extent void." (1 Freeman on Judgments, 120-c.) An illegal order is forever void. Decision is void on
9 the face of the judgment roll when from four corners of that roll, it may be determined that at least
10 one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over
11 subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered, (B &
12 C Investments, INc. v. F & ; M Nat. Bank & ; Trust , 903 P.2d 339 (Okla. App.Div 3, 1995).
13 "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." (Latana v.
14 Hopper, 102 F. 2d 188; Chicago v. New York 37 F Supp. 150)
15 When judges act when they do not have jurisdiction to act, or they enforce a void order (an order is-
16 sued by a judge without jurisdiction), they become trespassers of the law, and are engaged in treason.
17 (The Court: Yates v. Village of Hoffman Estates , Illinois , 209 F.Supp. 757 (N.D. Ill. 1962)
18 "The most obvious misconduct is to present false testimony or false evidence." Napue v. Illinois
19 (1959) 360 U.S. 264; United States v. Young (9th Cir. 1993) 17 F.3d 1201; United States v. Valen-
20 tine (2nd Cir. 1987) 820 F.2nd 565; SEE: Bus. & Prof. Code § 6068(d); Penal Code § 1473(b), and
21 Rule 5-200, Rules Prof. Conduct of State Bar.)
22 Due process is violated when false evidence is presented, whether offered intentionally or inadver-
23 tently. "Under well-established principles of due process, the prosecutor cannot present evidence it
24 knows is false and must correct any falsity of which it is aware... even if the false evidence was not
25 intentionally submitted." (Giles v. Maryland (1967) 386 U.S. 66... Napue v. Illinois (1959) 360 U.S.
26 264... People v. Sakarias (2000) 22 Cal.4th 596, 33 ..." People v. Seaton , 26 Cal.4th 598, 647; see
27 People v. Bolton (1979) 23 Cal.3d 208, 213-214; People v.Morales (2003) 112 Cal.App.4th 1176,
28

1 1192-1196.) "Rulings made in violation of Due Process are void." (Sabariego v Maverick , 124 US
2 261, 31 L Ed 430, 8 S Ct 461)

3 : " Rules of Professional Conduct - 3-200, Prohibitive Objectives -- Rules of Professional Conduct -
4 5-200 Deception to Court -- Business and Profession Code Section 6068 – SEE: Model Rule of Pro-
5 fessional Conduct Rule 1.1, cmt. 5 (1983) (amended 1998) "...competent handling of a particular
6 matter involves inquiry into analysis of the factual and legal elements of the problem and use of
7 methods and procedures meeting the standards of competent practitioner."

8 When a breach of ethics, and a duty of omission results in a wrong of commission, it is often because
9 of ignoring empirical evidence, i.e., then the abused victim and the laws that protect the victim --
10 even though it is relatively easy to know that a crime has, or has not been committed through empiri-
11 cal evidence, and the law -- but if the agents turn a blind eye to both evidence and the law, justice is
12 lost .

13 This is NOT "harmless error," rather it is unethical, blatant, deliberate and willful misconduct, and
14 may be moral turpitude, malum in se, (State v. Stiffler , 788 P.2 2205 (1990); Bus & Professional
15 Code 6107-6109).

16 . Obviously a judgment, though final and on the merits, has no binding force and is subject to collat-
17 eral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for
18 excess of jurisdiction, or where it is obtained by extrinsic fraud. [Citations.]" 7 Witkin , Cal. Proce-
19 dure, Judgment, § 286, p. 828.). (Burns v. Municipal Court (1961) 195 Cal.App.2d 596, 599 .)

20 A void judgment or proceeding founded on a void judgment is void: 30A Am Jur Judgments

21 ABUSE OF DISCRETION : A failure to take into proper consideration the facts and law relating to a
22 particular matter; an Arbitrary or unreasonable departure from precedent and settled judicial custom.

23 The human condition, which can be ignorance and fallibility -- especially for those in authority, per-
24 haps deceived by their own, as Shakespeare says, "insolence of office" -- is what makes the presump-
25 tion of innocence a good principle, if it is put into practice, for it is the basis for the protection of the
26 innocent, allowing for the lay citizen to have the protection of the law beyond their own familiarity
27 or understanding of it.

28 A judge is mandated to report attorneys for misconduct: Cal. Bus. & Prof. Code § 6086.7(a)(2). The

1 State Bar sends out a letter each year reminding judges of the statutory requirements. California Code
2 of Judicial Ethics: Currently, the code directs a judicial officer to "take appropriate corrective action
3 whenever information surfaces that a lawyer has violated ethical duties." (Cal. Canons of Jud. Eth-
4 ics, Canon 3D(2).) and, ABA Model Rule 3.8, covers the conduct of prosecutors.

5 Judges have the option to hold those responsible in prosecutorial misconduct in contempt of court --
6 and to impose upon them fines, or even temporary imprisonment.

7 "Attorneys should be disciplined for conduct that violates clearly established law, or conduct so out-
8 rageous that its illegality is obvious,"

9 Iron Mountain Mine and T.W. Arman intervene, "TWO MINERS AND 8000 ACRES OF LAND"
10 TITLE 15 > CHAPTER 1 > § 1

11 § 1. Trusts, etc., in restraint of trade illegal; penalty

12 Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or
13 commerce among the several States, or with foreign nations, is declared to be illegal. Every person
14 who shall make any contract or engage in any combination or conspiracy hereby declared to be ille-
15 gal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not ex-
16 ceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not
17 exceeding 10 years, or by both said punishments, in the discretion of the court.

18 TITLE 15 > CHAPTER 1 > § 2

19 § 2. Monopolizing trade a felony; penalty

20 Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any
21 other person or persons, to monopolize any part of the trade or commerce among the several States,
22 or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be pun-
23 ished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by
24 imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

25 TITLE 15 > CHAPTER 1 > § 3

26 § 3. Trusts in Territories or District of Columbia illegal; combination a felony

27 (a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or
28 commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade

1 or commerce between any such Territory and another, or between any such Territory or Territories
2 and any State or States or the District of Columbia, or with foreign nations, or between the District of
3 Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make
4 any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a fel-
5 ony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corpora-
6 tion, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or both said
7 punishments, in the discretion of the court. (b) Every person who shall monopolize, or attempt to
8 monopolize, or combine or conspire with any other person or persons, to monopolize any part of the
9 trade or commerce in any Territory of the United States or of the District of Columbia, or between
10 any such Territory and another, or between any such Territory or Territories and any State or States
11 or the District of Columbia, or with foreign nations, or between the District of Columbia, and any
12 State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall
13 be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000,
14 or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the
15 court.

16 TITLE 15 > CHAPTER 1 > § 8

17 § 8. Trusts in restraint of import trade illegal; penalty

18 Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public pol-
19 icy, illegal, and void when the same is made by or between two or more persons or corporations, ei-
20 ther of whom, as agent or principal, is engaged in importing any article from any foreign country into
21 the United States, and when such combination, conspiracy, trust, t is intended to operate in restraint
22 of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in
23 any part of the United States of any article or articles imported or intended to be imported into the
24 United States, or of any manufacture into which such imported article enters or is intended to enter.
25 Every person who shall be engaged in the importation of goods or any commodity from any foreign
26 country in violation of this section, or who shall combine or conspire with another to violate the
27 same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such
28 person shall be fined in a sum not less than \$100 and not exceeding \$5,000, and shall be further pun-

1 ished by imprisonment, in the discretion of the court, for a term not less than three months nor ex-
2 ceeding twelve months.

3 TITLE 15 > CHAPTER 1 > § 9

4 § 9. Jurisdiction of courts; duty of United States attorneys; procedure

5 The several district courts of the United States are invested with jurisdiction to prevent and restrain
6 violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in
7 their respective districts, under the direction of the Attorney General, to institute proceedings in eq-
8 uity to prevent and restrain such violations. Such proceedings may be by way of petitions setting
9 forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the
10 parties complained of shall have been duly notified of such petition the court shall proceed, as soon
11 as may be, to the hearing and determination of the case; and pending such petition and before final
12 decree, the court may at any time make such temporary restraining order or prohibition as shall be
13 deemed just in the premises.

14 TITLE 15 > CHAPTER 1 > § 10

15 § 10. Bringing in additional parties

16 Whenever it shall appear to the court before which any proceeding under section 9 of this title may
17 be pending, that the ends of justice require that other parties should be brought before the court, the
18 court may cause them to be summoned, whether they reside in the district in which the court is held
19 or not; and subpoenas to that end may be served in any district by the marshal thereof.

20 TITLE 15 > CHAPTER 1 > § 12

21 § 12. Definitions; short title

22 (a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce
23 against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;
24 sections seventy-three to seventy-six, inclusive, of an Act entitled "An Act to reduce taxation, to pro-
25 vide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hun-
26 dred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the
27 Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation,
28 to provide revenue for the Government, and for other purposes,' " approved February twelfth, nine-

1 teen hundred and thirteen; and also this Act. “Commerce,” as used herein, means trade or commerce
2 among the several States and with foreign nations, or between the District of Columbia or any Terri-
3 tory of the United States and any State, Territory, or foreign nation, or between any insular posses-
4 sions or other places under the jurisdiction of the United States, or between any such possession or
5 place and any State or Territory of the United States or the District of Columbia or any foreign na-
6 tion, or within the District of Columbia or any Territory or any insular possession or other place un-
7 der the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to
8 the Philippine Islands. The word “person” or “persons” wherever used in this Act shall be deemed to
9 include corporations and associations existing under or authorized by the laws of either the United
10 States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. (b)
11 This Act may be cited as the “Clayton Act”.

12 TITLE 15 > CHAPTER 101 > § 7506

13 § 7506. Department of Commerce programs

14 TITLE 15 > CHAPTER 101 > § 7507

15 § 7507. Department of Energy programs

16 TITLE 15 > CHAPTER 101 > § 7508

17 § 7508. Additional centers

18 (a) American Nanotechnology Preparedness Center The Program shall provide for the establishment,
19 on a merit-reviewed and competitive basis, of an American Nanotechnology Preparedness Center
20 which shall— (1) conduct, coordinate, collect, and disseminate studies on the societal, ethical, envi-
21 ronmental, educational, legal, and workforce implications of nanotechnology; and (2) identify antici-
22 pated issues related to the responsible research, development, and application of nanotechnology, as
23 well as provide recommendations for preventing or addressing such issues. (b) Center for nanomate-
24 rials manufacturing The Program shall provide for the establishment, on a merit reviewed and com-
25 petitive basis, of a center to— (1) encourage, conduct, coordinate, commission, collect, and dissemi-
26 nate research on new manufacturing technologies for materials, devices, and systems with new com-
27 binations of characteristics, such as, but not limited to, strength, toughness, density, conductivity,
28 flame resistance, and membrane separation characteristics; and (2) develop mechanisms to transfer

1 such manufacturing technologies to United States industries. (c) Reports The Council, through the
2 Director of the National Nanotechnology Coordination Office, shall submit to the Senate Committee
3 on Commerce, Science, and Transportation and the House of Representatives Committee on Sci-
4 ence— (1) within 6 months after December 3, 2003, a report identifying which agency shall be the
5 lead agency and which other agencies, if any, will be responsible for establishing the Centers de-
6 scribed in this section; and (2) within 18 months after December 3, 2003, a report describing how the
7 Centers described in this section have been established.

8 TITLE 15 > CHAPTER 1 > § 21

9 § 21. Enforcement provisions

10 (a) Commission, Board, or Secretary authorized to enforce compliance Authority to enforce compli-
11 ance with sections 13 , 14 , 18 , and 19 of this title by the persons respectively subject thereto is
12 vested in the Surface Transportation Board where applicable to common carriers subject to jurisdic-
13 tion under subtitle IV of title 49 ; in the Federal Communications Commission where applicable to
14 common carriers engaged in wire or radio communication or radio transmission of energy; in the
15 Secretary of Transportation where applicable to air carriers and foreign air carriers subject to part A
16 of subtitle VII of title 49 ; in the Board of Governors of the Federal Reserve System where applicable
17 to banks, banking associations, and trust companies; and in the Federal Trade Commission where
18 applicable to all other character of commerce to be exercised as follows: (b) Issuance of complaints
19 for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening
20 and alteration of reports or orders Whenever the Commission, Board, or Secretary vested with juris-
21 diction thereof shall have reason to believe that any person is violating or has violated any of the
22 provisions of sections 13 , 14 , 18 , and 19 of this title, it shall issue and serve upon such person and
23 the Attorney General a complaint stating its charges in that respect, and containing a notice of a hear-
24 ing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The
25 person so complained of shall have the right to appear at the place and time so fixed and show cause
26 why an order should not be entered by the Commission, Board, or Secretary requiring such person to
27 cease and desist from the violation of the law so charged in said complaint. The Attorney General
28 shall have the right to intervene and appear in said proceeding and any person may make application,

1 and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene
2 and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be
3 reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hear-
4 ing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the
5 provisions of said sections have been or are being violated, it shall make a report in writing, in which
6 it shall state its findings as to the facts, and shall issue and cause to be served on such person an order
7 requiring such person to cease and desist from such violations, and divest itself of the stock, or other
8 share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections
9 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the
10 expiration of the time allowed for filing a petition for review, if no such petition has been duly filed
11 within such time, or, if a petition for review has been filed within such time then until the record in
12 the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the
13 Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall
14 deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it
15 under this section. After the expiration of the time allowed for filing a petition for review, if no such
16 petition has been duly filed within such time, the Commission, Board, or Secretary may at any time,
17 after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part,
18 any report or order made or issued by it under this section, whenever in the opinion of the Commis-
19 sion, Board, or Secretary conditions of fact or of law have so changed as to require such action or if
20 the public interest shall so require: Provided, however, That the said person may, within sixty days
21 after service upon him or it of said report or order entered after such a reopening, obtain a review
22 thereof in the appropriate court of appeals of the United States, in the manner provided in subsection
23 (c) of this section. (c) Review of orders; jurisdiction; filing of petition and record of proceeding; con-
24 clusiveness of findings; additional evidence; modification of findings; finality of judgment and de-
25 cree Any person required by such order of the commission, board, or Secretary to cease and desist
26 from any such violation may obtain a review of such order in the court of appeals of the United
27 States for any circuit within which such violation occurred or within which such person resides or
28 carries on business, by filing in the court, within sixty days after the date of the service of such order,

1 a written petition praying that the order of the commission, board, or Secretary be set aside. A copy
2 of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or
3 Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the
4 proceeding, as provided in section 2112 of title 28 . Upon such filing of the petition the court shall
5 have jurisdiction of the proceeding and of the question determined therein concurrently with the
6 commission, board, or Secretary until the filing of the record, and shall have power to make and enter
7 a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and
8 enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to
9 its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors
10 pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by
11 substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or
12 Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such
13 order of the commission, board, or Secretary. If either party shall apply to the court for leave to ad-
14 duce additional evidence, and shall show to the satisfaction of the court that such additional evidence
15 is material and that there were reasonable grounds for the failure to adduce such evidence in the pro-
16 ceeding before the commission, board, or Secretary, the court may order such additional evidence to
17 be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such
18 manner and upon such terms and conditions as to the court may seem proper. The commission,
19 board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the
20 additional evidence so taken, and shall file such modified or new findings, which if supported by
21 substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or set-
22 ting aside of its original order, with the return of such additional evidence. The judgment and decree
23 of the court shall be final, except that the same shall be subject to review by the Supreme Court upon
24 certiorari, as provided in section 1254 of title 28 . (d) Exclusive jurisdiction of Court of Appeals
25 Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or
26 set aside orders of the commission, board, or Secretary shall be exclusive. (e) Liability under antitrust
27 laws No order of the commission, board, or Secretary or judgment of the court to enforce the same
28 shall in anywise relieve or absolve any person from any liability under the antitrust laws. (f) Service

1 of complaints, orders and other processes Complaints, orders, and other processes of the commission,
2 board, or Secretary under this section may be serviced by anyone duly authorized by the commission,
3 board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member
4 of the partnership to be served, or to the president, secretary, or other executive officer or a director
5 of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal of-
6 fice or place of business of such person; or (3) by mailing by registered or certified mail a copy
7 thereof addressed to such person at his or its residence or principal office or place of business. The
8 verified return by the person so serving said complaint, order, or other process setting forth the man-
9 ner of said service shall be proof of the same, and the return post office receipt for said complaint,
10 order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service
11 of the same. (g) Finality of orders generally Any order issued under subsection (b) of this section
12 shall become final— (1) upon the expiration of the time allowed for filing a petition for review, if no
13 such petition has been duly filed within such time; but the commission, board, or Secretary may
14 thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of
15 this section; or (2) upon the expiration of the time allowed for filing a petition for certiorari, if the
16 order of the commission, board, or Secretary has been affirmed, or the petition for review has been
17 dismissed by the court of appeals, and no petition for certiorari has been duly filed; or (3) upon the
18 denial of a petition for certiorari, if the order of the commission, board, or Secretary has been af-
19 firmed or the petition for review has been dismissed by the court of appeals; or (4) upon the expira-
20 tion of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court di-
21 rects that the order of the commission, board, or Secretary be affirmed or the petition for review be
22 dismissed. (h) Finality of orders modified by Supreme Court If the Supreme Court directs that the
23 order of the commission, board, or Secretary be modified or set aside, the order of the commission,
24 board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become fi-
25 nal upon the expiration of thirty days from the time it was rendered, unless within such thirty days
26 either party has instituted proceedings to have such order corrected to accord with the mandate, in
27 which event the order of the commission, board, or Secretary shall become final when so corrected.
28 (i) Finality of orders modified by Court of Appeals If the order of the commission, board, or Secre-

1 tary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition
2 for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has
3 been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order
4 of the commission, board, or Secretary rendered in accordance with the mandate of the court of ap-
5 peals shall become final on the expiration of thirty days from the time such order of the commission,
6 board, or Secretary was rendered, unless within such thirty days either party has instituted proceed-
7 ings to have such order corrected so that it will accord with the mandate, in which event the order of
8 the commission, board, or Secretary shall become final when so corrected. (j) Finality of orders is-
9 sued on rehearing ordered by Court of Appeals or Supreme Court If the Supreme Court orders a re-
10 hearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for
11 a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such pe-
12 tition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the
13 court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary
14 rendered upon such rehearing shall become final in the same manner as though no prior order of the
15 commission, board, or Secretary had been rendered. (k) "Mandate" defined As used in this section
16 the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from
17 the date of issuance thereof, means the final mandate. (l) Penalties Any person who violates any or-
18 der issued by the commission, board, or Secretary under subsection (b) of this section after such or-
19 der has become final, and while such order is in effect, shall forfeit and pay to the United States a
20 civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and
21 may be recovered in a civil action brought by the United States. Each separate violation of any such
22 order shall be a separate offense, except that in the case of a violation through continuing failure or
23 neglect to obey a final order of the commission, board, or Secretary each day of continuance of such
24 failure or neglect shall be deemed a separate offense.

25 TITLE 15 > CHAPTER 1 > § 37

26 § 37. Immunity from antitrust laws

27 (a) Inapplicability of antitrust laws Except as provided in subsection (d) of this section, the antitrust
28 laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities

1 or charitable remainder trusts. (b) Immunity Except as provided in subsection (d) of this section, any
2 person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any
3 kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of set-
4 ting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implement-
5 ing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or
6 charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right
7 not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsec-
8 tion. (c) Treatment of certain annuities and trusts Any annuity treated as a charitable gift annuity, or
9 any trust treated as a charitable remainder trust, either— (1) in any filing by the donor with the Inter-
10 nal Revenue Service; or (2) in any schedule, form, or written document provided by or on behalf of
11 the donee to the donor; shall be conclusively presumed for the purposes of this section and section
12 37a of this title to be respectively a charitable gift annuity or a charitable remainder trust, unless there
13 has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the do-
14 nor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder
15 trust when created. (d) Limitation Subsections (a) and (b) of this section shall not apply with respect
16 to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift
17 annuities, or charitable remainder trusts, created after the State enacts a statute, not later than De-
18 cember 8, 1998, that expressly provides that subsections (a) and (b) of this section shall not apply
19 with respect to such charitable gift annuities and such charitable remainder trusts.

20 TITLE 15 > CHAPTER 1 > § 15c Prev | Next

21 § 15c. Actions by State attorneys general

22 How Current is This? (a) *Parens patriae*; monetary relief; damages; prejudgment interest (1) Any at-
23 torney general of a State may bring a civil action in the name of such State, as *parens patriae* on be-
24 half of natural persons residing in such State, in any district court of the United States having juris-
25 diction of the defendant, to secure monetary relief as provided in this section for injury sustained by
26 such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The
27 court shall exclude from the amount of monetary relief awarded in such action any amount of mone-
28 tary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which

1 is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection
2 (b)(2) of this section, and (ii) any business entity. (2) The court shall award the State as monetary re-
3 lief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost
4 of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to
5 a motion by such State promptly made, simple interest on the total damage for the period beginning
6 on the date of service of such State's pleading setting forth a claim under the antitrust laws and end-
7 ing on the date of judgment, or for any shorter period therein, if the court finds that the award of such
8 interest for such period is just in the circumstances. In determining whether an award of interest un-
9 der this paragraph for any period is just in the circumstances, the court shall consider only— (A)
10 whether such State or the opposing party, or either party's representative, made motions or asserted
11 claims or defenses so lacking in merit as to show that such party or representative acted intentionally
12 for delay or otherwise acted in bad faith; (B) whether, in the course of the action involved, such State
13 or the opposing party, or either party's representative, violated any applicable rule, statute, or court
14 order providing for sanctions for dilatory behavior or other wise providing for expeditious proceed-
15 ings; and (C) whether such State or the opposing party, or either party's representative, engaged in
16 conduct primarily for the purpose of delaying the litigation or increasing the cost thereof. (b) Notice;
17 exclusion election; final judgment (1) In any action brought under subsection (a)(1) of this section,
18 the State attorney general shall, at such times, in such manner, and with such content as the court
19 may direct, cause notice thereof to be given by publication. If the court finds that notice given solely
20 by publication would deny due process of law to any person or persons, the court may direct further
21 notice to such person or persons according to the circumstances of the case. (2) Any person on whose
22 behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudi-
23 cation the portion of the State claim for monetary relief attributable to him by filing notice of such
24 election with the court within such time as specified in the notice given pursuant to paragraph (1) of
25 this subsection. (3) The final judgment in an action under subsection (a)(1) of this section shall be res
26 judicata as to any claim under section 15 of this title by any person on behalf of whom such action
27 was brought and who fails to give such notice within the period specified in the notice given pursuant
28 to paragraph (1) of this subsection. (c) Dismissal or compromise of action An action under subsec-

1 tion (a)(1) of this section shall not be dismissed or compromised without the approval of the court,
2 and notice of any proposed dismissal or compromise shall be given in such manner as the court di-
3 rects. (d) Attorneys' fees In any action under subsection (a) of this section— (1) the amount of the
4 plaintiffs' attorney's fee, if any, shall be determined by the court; and (2) the court may, in its discre-
5 tion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney
6 general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

7 Who is an “owner and operator” for purposes of CERCLA liability?

8 **The Ninth Circuit's decision in Hearthside not only provides additional clarity to the compli-**
9 **cated CERCLA liability scheme, the Court's decision continues a long line of CERCLA cases**
10 **that emphasize the need to interpret CERCLA in a manner that leads to expedited contamina-**
11 **tion remediation.**

12 **ABSOLUTE ORDER FOR TEMPORARY INJUNCTIVE RELIEF FOR CEQA EIS REVIEW,**
13 **EMERGENCY INTERVENTION WITH PROBABLE CAUSE, SUPERSEDEAS OF RIGHT.**

14 **WRONGFUL JUDICIAL TAKING UNDER FALSE PRETENSES, FRAUD UPON THE COURT**

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

16 I. <Wars in general are settled by treaties>. The chief laws of nature about treaties were explained in
17 the doctrine of contracts in natural liberty. {* } But we must remember that the exception of unjust
18 force and fear cannot be admitted against the obligation of any treaties of peace; otherwise the old
19 controversies <that occasioned the war> might always be kept a-foot. And yet such exceptions may
20 justly take place when the war is manifestly and avowedly unjust on one side; or if the terms imposed
21 {by the more potent side} are manifestly injurious and contrary to all humanity. In these cases the
22 party injured may insist upon an arbitration; and if the other side refuse to submit to it, each side must
23 by force consult its own safety and the maintenance of its rights {, by what aids it can find}.1

24 Treaties are divided into *real*, and *personal*: the personal, which are less in use, are entered into in fa-
25 vour of the prince's person, and cease to bind upon his demise. The *real*, respect the body of the peo-
26 ple, or the nation, which is deemed immortal. 2 Treaties are also divided into the *equal*, {such as bring
27 equal or proportionable burdens on each side,} and *unequal* {which bring unequal burdens}.3 But 'tis
28

1 not every unequal treaty that any way impairs or diminishes the† majesty and independency of the
2 side submitting to the greater burden.

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

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

17 *190 See Lucas v. S.C. Coastal Comm'n, 505 U.S. 1003, 1031–32 (1992). Once a mining claim is de-*
18 *termined to constitute a valid property interest, then state law will control how it can be sold, trans-*
19 *ferred, inherited, and the like—unless any particular aspect of that property right is preempted by*
20 *federal law. See Duguid v. Best, 291 F.2d 235, 239, 242 (9th Cir. 1961).*

21 *191 See Lucas, 505 U.S. at 1031–32.*

22 *192 480 U.S. 470, 519 (1987) (quoting Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155,*
23 *161 (1980)) (alterations in original). See also Palazzolo, 533 U.S. at 630; Lucas, 505 U.S. at 1016*
24 *n.7; Preseault v. Interstate Commerce Comm'n, 494 U.S. 1, 20–24 (1990) (providing a detailed ar-*
25 *ticulation of the principle that state law defines the nature of property rights); Kinross Copper Corp.*
26 *v. Oregon, 981 P.2d 833 (Or. App. 1999) (denying a waste water discharge permit for mining on fed-*
27 *eral mining claims not a taking because there is no right to pollute), cert. denied, 531 U.S. 960*
28 *(2000).*

1 193 See, e.g., *M & J Coal Co. v. United States*, 47 F.3d 1148, 1153 (Fed. Cir. 1995) (discussing the
2 impact of federal law of navigational servitude and submerged lands on property definitions); see
3 also *Lucas*, 505 U.S. at 1029 (discussing the submerged lands and navigational servitude); *Scranton*
4 *v. Wheeler*, 179 U.S. 141, 163 (1900) (defining property rights in the context of submerged lands);
5 *Palm Beach Isles Assocs. v. United States*, 208 F.3d 1374 (Fed. Cir. 2000) (navigational servitude),
6 *aff'd*, 231 F.3d 1354 (Fed. Cir. 2000), *reh'g en banc denied*, 231 F.3d 1365 (Fed. Cir. 2000). In *Palm*
7 *Beach Isles*, the court found that a permit denial for environmental reasons, rather than navigational
8 reasons, did not invoke the navigational servitude “background principle.” *Id.* at 1384.

9 194 978 F.2d 1269, 1276 (D.C. Cir. 1992).

10 195 *Id.* at 1275–76.

11 196 *Id.* at 1277–87.

12 197 278 F.2d 842, 847 n.4 (9th Cir. 1960) (citing *United States ex rel. Tenn. Valley Auth. v. Powel-*
13 *son*, 319 U.S. 266, 279 (1943)); see also *Richmond Elks Hall Ass’n v. Richmond Redevelopment*
14 *Agency*, 561 F.2d 1327, 1330 (9th Cir. 1977) (holding that federal courts are not bound by state law
15 but look to it for aid in discerning the scope of property interests). These formulations may be incon-
16 sistent with Justice O’Connor’s dissent in *Preseault*, 494 U.S. at 20–24.

17 198 *Adaman*, 278 F.2d at 847.

18 199 *Id.*

19 200 See *id.*

20 201 *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027, 1030 (1992) (quoting *Bd. of Regents of State*
21 *Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

22 202 See *id.* at 1028–29.

23 203 See, e.g., *Schneider v. Cal. Dep’t. of Corr.*, 151 F.3d 1194, 1200–01 (9th Cir. 1998).

24 The . . . Court’s recognition of the unremarkable proposition that state law may affirmatively create
25 constitutionally protected “new property” interests in no way implies that a State may by statute or
26 regulation roll back or eliminate traditional “old property” rights. As the Supreme Court has made
27 clear, “the government does not have unlimited power to redefine property rights.” . . . Rather, there
28

1 is, we think, a “core” notion of constitutionally protected property into which state regulation simply
2 may not intrude without prompting Takings Clause scrutiny.

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

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

13 447 U.S. 74, 93–94 (1980) (Marshall, J., concurring).

14 The Ninth Circuit observed:

15 “[T]here is, we think, a ‘core’ notion of constitutionally protected property,” and a state’s power to
16 alter it by legislation “operates as a one-way ratchet of sorts,” allowing the states to create new
17 property rights but not to encroach on traditional property rights.” . . . [W]ere the rule otherwise,
18 States could unilaterally dictate the content of—indeed altogether opt out of both the Takings Clause
19 and the Due Process Clause simply by statutorily recharacterizing traditional property-law concepts.
20 *Wash. Legal Found. v. Legal Found. of Wash.*, 236 F.3d 1097, 1108 (9th Cir. 2001) (quoting *Schnei-*
21 *der*, 151 F.3d at 1200–01), *reh’g*, 271 F.3d 835, 841 (9th Cir. 2001) (*en banc*), *cert. granted*, 122 S.
22 *Ct.* 2355 (2002) (No. 01-1325).

23 Lawrence H. Tribe writes:

24 To the degree that private property is to be respected in the face of republican and positivist visions, it
25 becomes necessary to resist even an explicit government proclamation that all property acquired in
26 the jurisdiction is held subject to government’s limitless power to do with it what government wishes.
27 Indeed, government must be denied the power to give binding force to so sweeping an announcement,
28

1 . . . *if we are to give content to the just compensation clause as a real constraint on [government]*
2 *power [E]xpectations protected by the clause must have their source outside positive law.*

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

13 **Federal sovereign immunity**

14 "Though this was the intent of the Congress [to waive sovereign immunity] in passing the 1972 Fed-
15 eral Water Pollution Control Act Amendments, the Supreme Court, encouraged by Federal agencies,
16 has misconstrued the original intent." S. Rep. No. 370, 95th Cong., 1st Sess. 67 (1977), reprinted in
17 1977 U.S.C.C.A.N. 4326, 4392. See Clean Air Act Amendments of 1977, Pub. L. No. 95-95, [section]
18 116, 91 Stat. 711 (1977); see also Clean Water Act Amendments of 1977, Pub. L. 217, [subsection]
19 60, 61(a), 91 Stat. 1597, 1598 (1977).

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

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

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

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

21 **California Health and Safety Code Section 25548**

22 The California legislature, like Congress, took action in 1996 and enacted California Health and
23 Safety Code section 25548—the California law analogous to CERCLA section 107(n). The stated in-
24 tent of section 25548 is “to specify the type of lender and fiduciary conduct that will not incur liability
25 for hazardous material contamination.” As such, section 25548 provides exemptions and limitations to
26 potential fiduciary liability under the environmental laws. Thus, section 25548 residually identifies the
27 universe of potential liability for fiduciaries. Specifically, section 25548 addresses the exceptions to
28 and limitations on “the liability of trustees, executors, and other fiduciaries for hazardous material

1 contamination involving property that is part of the fiduciary estate.”

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

15 1. The defendant acquired title to the property subsequent to the disposal or placement of the hazard-
16 ous substance.

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

18 3. The defendant “provides full cooperation, assistance, and facility access to the persons that are au-
19 thorized to conduct response actions at the facility (including the cooperation and access necessary for
20 the installation, integrity, operation, and maintenance of any complete or partial
21 response action at the facility).”

22 4. The defendant “is in compliance with any land use restrictions established or relied on in connec-
23 tion with the response action at a facility.”

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

26 With respect to beneficiary ownership for CERCLA purposes, creation of an express trust in Califor-
27 nia historically vested full title of trust property in the trustee or trustees. The California legislature
28 repealed this statute in 1986, so the modern rule may now apply. The modern rule holds that creation

1 of a trust divides title such that the trustee or trustees take legal title, and the beneficiary or beneficiar-
2 ies take equitable title.

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

6 With respect to whether title was acquired via inheritance or bequest, CERCLA defines neither “in-
7 heritance” nor “bequest.” CERCLA case law also provides no clear rules or definitions for what ex-
8 actly constitutes an inheritance or bequest. Reasoning from the dictionary definitions of
9 “inheritance,” “bequest,” and “devise,” property taken through testamentary trusts or intestate succes-
10 sion would likely constitute inherited or bequeathed property, as the property interest transfers upon
11 the death of the prior owner. No federal court opinions addressing this issue of whether inter vivos
12 trusts or lifetime gifts constitute an inheritance or bequest for purposes of the inheritance or bequest
13 defense exist. The only authority on point is Tamposi Family Investments, an opinion of the Envi-
14 ronmental Protection Agency Appeals Board.

15 In Tamposi, the Appeals Board rejected petitioner’s argument that a gift from a father to a real estate
16 investment partnership, in which his children were the exclusive partners, should qualify
17 for the inheritance or bequest defense. Citing Black’s Law Dictionary definitions for “inheritance,”
18 “bequest,” and “devise,” the Appeals Board found that the text of CERCLA indicated that the inheri-
19 tance or bequest defense was inapplicable to inter vivos transfers, as the defense only applied to trans-
20 fers occurring upon death of the prior owner. Since it is the sole authority on point and an analysis of
21 CERCLA by an arm of the EPA itself, courts considering the issue in the future will likely find Tam-
22 posi highly persuasive and may defer to the agency’s interpretation. Thus, the best option for settlers
23 wishing to protect beneficiaries from CERCLA liability during the lifetime of the settlor is to use tes-
24 tamentary trusts and devises in wills to transfer interests in impacted property. They should then pro-
25 vide bequests to beneficiaries that may enjoy limited liability status due to the form of business (such
26 as an LLC not comprised of beneficiary members). Combining these steps with thoughtful timing of
27 sales or distributions to occur after cleanup, or in an otherwise protective manner, are also optional
28 protective measures. However, there is currently no authority as to what structures will be effective.

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

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

12 Nevertheless, the presence of this language in Tamposi raises the possibility that some level of in-
13 quiry, albeit a very low level, will be required of owners who take title by inheritance or bequest.

14 Potential beneficiaries may be able to disclaim property placed in trust for their benefit. See, e.g.,
15 CAL. PROB. CODE § 15309 (West 2002) ("A disclaimer or renunciation by a beneficiary of all or
16 part of his or her interest under a trust shall not be considered a transfer under Section 15300 or
17 15301."). While an enticing theoretical solution, practically this is not a good option where the prop-
18 erty value exceeds, or will exceed, the cost of remediation.

19 The California Code of Regulations addresses taxation rules for changes in ownership in title 18, sec-
20 tion 462. Section 462.160 pertains to trusts. Subsection (a) of section 462.160 provides the
21 general rule that transfer of real property interests into trusts, by the settlor or anyone else, is a change
22 in ownership; subsection (b) provides instances excluded from this rule. Subsection (c)
23 provides the general rule that termination of a trust or any portion of a trust, constitutes a change in
24 ownership, and subsection (d) provides the exceptions to this second general rule. These rules for ex-
25 clusions and exceptions—for example, those transfers of interests that do not constitute changes in
26 ownership—are complex and are therefore presented in the Appendix in tabular form in an attempt to
27 simplify comparisons. While untested in the courts, would-be settlers and/or beneficiaries may be able
28 to use these rules as a guide for selecting trusts that will make CERCLA owner liability for the bene-

1 ficiaries less likely, or at least delay such potential liability until such time as the property may be
2 transferred with less or no risk. Given the foregoing, it appears that the best overall strategy is to an-
3 ticipate transfers in property, to attempt to structure such transfers to fall within the statutory defenses,
4 and to preserve and pursue rights against other potentially responsible parties.

5 **The United States District Court for the Western District of Washington has ruled that a party**
6 **cannot be liable under CERCLA as an "owner/operator" for the remediation of impacted soil**
7 **and water if the impacted soil and water is not located within the party's facility, and is entirely**
8 **outside of the property limits of the party's facility, even though the contaminants that impacted**
9 **the soil and groundwater may have originated at the party's facility and migrated off-site to im-**
10 **act down gradient locations. See , United States v. Washington State Dept. of Transportation ,**
11 **Case NO. 08-5722RJB.**

12 CAMERA STELLATA

13 EPA, DOJ, AIG, Bayer & AstraZeneca, successor to Stauffer Chemical, & Jardine Matheson
14 Bayer CropScience is with annual sales of about EUR 6.5 billion one of the world's leading innovative
15 crops science companies in the area of crop protection (Crop Protection), non agricultural pest-control
16 (Environmental Science), seeds and plant biotechnology (BioScience).

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

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

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

24 The Group's interests include Jardine Pacific, Jardine Motors, Jardine Lloyd Thompson, Hongkong
25 Land, Dairy Farm, Mandarin Oriental, Jardine Cycle & Carriage and Astra International. These com-
26 panies are leaders in the fields of engineering and construction, transport services, insurance broking,
27 property investment and development, retailing, restaurants, luxury hotels, motor vehicles and related
28

1 activities, financial services, heavy equipment, mining and agribusiness. The Group also has a minor-
2 ity investment in Rothschilds Continuation, the merchant banking house.
3 Incorporated in Bermuda, Jardine Matheson Holdings Limited has its primary share listing in London,
4 with secondary listings in Bermuda and Singapore. Jardine Matheson Limited operates from Hong
5 Kong and provides management services to Group companies.

6 CURIA REGIS OF THE ARMANSHIRE

7 The Act of 1487 (3 Hen. VII.) created a court composed of seven persons, the Chancellor, the Treas-
8 urer, the Keeper of the Privy Seal, or any two of them, with a bishop, a temporal lord and the two
9 chief justices, or in their absence two other justices. It was to deal with cases of "unlawful main-
10 tainance, giving of licences, signs and tokens, great riots, unlawful assemblies"; in short with all of-
11 fences against the law which were too serious to be dealt with by the ordinary courts. The jurisdiction
12 thus entrusted to this committee of the council was not supplementary,
13 therefore, like that granted in 1453, but it superseded the ordinary courts of law in cases where these
14 were too weak to act. The act simply supplied machinery for the exercise, under special circum-
15 stances, of that extraordinary penal jurisdiction which the council had never ceased to possess. By an
16 act of 1529 an eighth member, the President of the Council, was added to the Star Chamber, the juris-
17 diction of which was at the same time confirmed. At this time the court
18 performed a very necessary and valuable work in punishing powerful offenders who could not be
19 reached by the ordinary courts of law. It was found very useful by Cardinal Wolsey, and a little later
20 Sir Thomas Smith says its object was "to bridle such stout noblemen or gentlemen who would offer
21 wrong by force to any manner of men, and cannot be content to demand or defend the right by order
22 of the law."

23 In 1661 a committee of the House of Lords reported "that it was fit for the good of the nation that
24 there be a court of like nature to the Star Chamber". Congress in 1989 unanimously passed the WPA.
25 S.372 legislation would allow access to jury trials and would remove the exclusive jurisdiction of the
26 U.S. Court of Appeals. **Application of Supreme Court Rule 4**
27 At the opening of the United States Circuit Court in Boston on May 16, Judge SPRAGUE delivered a
28 charge to the Grand Jury, in which he defined the state of our laws with reference to the crime of pi-

1 racy. After citing provisions from the laws of 1790, 1820, 1825, 1846 and 1847, as to what constitutes
2 the general crime, with the different degrees of penalty, the Judge remarks that these enactments were
3 founded upon the clause in the Constitution which gives Congress the power to define and punish pi-
4 racy. But the constitutional power to regulate commerce also affords a basis for additional penal en-
5 actments, covering all possible aggressions and depredations upon our commerce. The Judge then lays
6 down the following important principles, the bearing of which will be sufficiently evident in the pre-
7 sent crisis:

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

25 Executive Order 11988 requires federal agencies to avoid to the extent possible the long and short-
26 term adverse impacts associated with the occupancy and modification of flood plains and to avoid di-
27 rect and indirect support of floodplain development wherever there is a practicable alternative. In ac-
28 complishing this objective, "each agency shall provide leadership and shall take action to reduce the

1 risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to re-
2 store and preserve the natural and beneficial values served by flood plains in carrying out its responsi-
3 bilities" for the following actions: acquiring, managing, and disposing of federal lands and facilities;
4 providing federally-undertaken, financed, or assisted construction and improvements;
5 conducting federal activities and programs affecting land use, including but not limited to water and
6 related land resources planning, regulation, and licensing activities.

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

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

12 ***QUANTUM DAMNIFICATUS QUARE IMPEDIT***

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

17 Congress has the right to make any law that is 'necessary and proper' for the execution of its enumer-
18 ated powers (Art. I, Sec. 8, Cl. 18). LIQUIDATE AIG, CLAWBACK TARP, OPEN THE MINT.

19 Commission of the Hazard And Remediation Directorate: _____

20 /s/ T.W. Arman, owner of Iron Mountain and Arman Mines Ministry Arboretum, Gales & Stannaries

21 I, T.W. Arman, hereby state that the same is true of my own knowledge, except as to matters which are
22 herein stated on my own information or belief, and as to those matters, I believe them to be true.

23 Date: July 27, 2010 Signature: _____

24 Verified affidavit: /s/ T.W. Arman, Mayor of the Armanshire, Prime Minister of Natural Resources
25 Grantee, Patentee, Locator, Senior Directorate of the Ministry of Mining & Principles of Pigments.

26 Owner of 'ARMAN', "archaeal Richmond Mine acidophilic nanoorganisms", SENIOR DIRECTOR
27 OF THE ARMAN MINES MINISTRY OF NATURE ARBORETUM, GALES, AND STANNARIES
28 **PRIVATE INSPECTOR GENERAL OF THE IRON MOUNTAIN MINE SUPERFUND SITE**