

1 John F. Hutchens, Pro Per

2 T.W. Arman, Pro Per

3 P.O. Box 182

4 Canyon, Ca. 94516

5 925-878-9167

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 TWO MINERS & 8000 ACRES OF LAND  
11 (T.W. ARMAN and JOHN F. HUTCHENS,  
12 IRON MOUNTAIN MINES, INC. et al)  
and on behalf of all others similarly situated  
under GOD

13 Defendants

14 v.

15 UNITED STATES OF AMERICA et al

16 Plaintiffs

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18 TWO MINERS & 8000 ACRES OF LAND  
19 (T.W. ARMAN and JOHN F. HUTCHENS,  
20 IRON MOUNTAIN MINES, INC. et al)  
and on behalf of all others similarly situated  
under GOD

21 Defendants

22 v.

23 (STATE OF CALIFORNIA, On behalf of the  
24 California Department of Toxic Substances  
25 Control and the California Regional Water  
Quality Control Board for the Central Valley  
Region)

26 Plaintiffs

Civil No. S-91-0768 DFL/JFM

OBJECTIONS to REQUEST FOR DELAY

AGREEMENT to REQUEST for STATUS

CONFERENCE on JOINDER and filing of

INTERPLEADOR & COUNTERCLAIM

with CONSTITUTIONAL QUESTIONS;

TITLE BY PATENT

27 Date: Time: Courtroom No. 7

28 Hon. JUDGE MENDEZ

## CITATIONS

1. “A valid and subsisting location of mineral lands, made and kept in accordance with the provisions of the statutes of the United States, has the effect of a grant by the United States of the right of present and exclusive possession of the lands located.”

U.S. Supreme Court, 1884

2. With the title passes away all authority or control of the executive department over the land and over the title which it has conveyed. It would be as reasonable to hold that any private owner who has conveyed it to another can, of his own volition, recall, cancel or annul the instrument which he has made and delivered. If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals, and if the government is the party injured this is the proper course”.

Moore v. Robbins, 96 U.S. 530, 533, 24 L. Ed. 848.

3. That whenever the question in any court, state or federal, is whether a title to land which has once been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the state, is subject to state legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States”.

4. Wilcox v. McConnell, 13 Pet. (U.S.) 498, 517, 10 L. Ed. 264.

“Title by patent from the United States to a tract of ground, theretofore public, prima facie carries ownership of all beneath the surface, and possession under such patent of the surface is presumptively possession of all beneath the surface.

Lawson v. United States Min. Co. 207 U.S. 1, 8, 28 Sup. Ct. 15, 17, 52, L. Ed. 65.

5. Grub-stake contracts will be enforced by the courts, but only as other contracts; that is to say, it is not enough for parties to assert that they have rights, in order to secure legal protection, but they must be able to prove in each case a clear and definite contract, and that by the terms and conditions of such contract, and compliance therewith on their part, rights have become vested.

1 Cisna v. Mallory (C.C.) 84 Fed. 851, 854.

2 6. The common-law rule is that the lessee of real property may work already opened mines, but  
3 cannot open new ones. But the lease may expressly, or by implication from express powers,  
4 give the right to take the minerals, the instrument is a genuine lease.

5 Oshoon v. Bayaud 123 N.Y. 298. 25 N.E. 376

6 7. On the other hand, if an attempt is made by the instrument to pass title to the minerals in  
7 place, there is really a sale of the mineral.

8 Plummer v. Hillside Coal & Iron Co. 104 Fed. 208, 43 C.C. A. 490

9 8. Whatever the form of the instrument of conveyance, and even though the parties speak of it  
10 in its terms as a lease, if its fair construction shows that the title to the minerals in place is to  
11 pass upon the delivery of the instrument, while the surface is retained, or vice versa, and, of  
12 course, for all time, if the fee is granted, except that the fee to the space occupied by the miner-  
13 als seems to terminate when the mine is exhausted.

14 McConnell v. Pierce, 210 Ill. 627, 71 N.E. 622., Moore v. Indian Camp Coal Co., 493, 0 N.E. 6.

15 9. There is sufficient “logical relationship” between the claim and the counterclaim to classify  
16 the latter as “compulsory” and hence ancillary jurisdiction extended to additional necessary  
17 parties, regardless of a lack of other jurisdictional grounds. United Artists Corp v. Masterpiece  
18 productions Inc. 221 F.2d 213 (2d Cir. 1955) Joinder of State of California.

19 The relationship among joint venturers was eloquently described by United States Supreme  
20 Court Justice Cardozo in the seminal 1928 case of Meinhard v. Salmon - “joint adventurers,  
21 like copartners, owe to one another, while the enterprise continues, the duty of the finest loy-  
22 alty. Many forms of conduct permissible in a workaday world for those acting at arm’s length,  
23 are forbidden to those bound by fiduciary ties. Not honesty alone, but the punctilio of an honor  
24 the most sensitive, is then the standard of behavior. As to this there has developed a tradition  
25 that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of  
26 equity when petitioned to undermine the rule of undivided loyalty by the ‘disintegrating ero-  
27 sion’ of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a  
28 level higher than that trodden by the crowd.”)

1 **OBJECTIONS**

2 10. Defendants submit that there was no just reason for delay for entry of the consent decree,  
3 and there can be no just reason for delay of judicial review with allegations of fraud.

4 11. Defendants submit that an answer is required by local rules.

5 12. Defendants submit that until the defendants receive fair treatment and consideration by the  
6 plaintiffs that a status conference must not be unfair or a disservice to the justice sought.

7 13. Defendants submit that this Interpleader and Counter-claim includes a citizen suit.

8 14. Defendants submits that the pleadings explain that joining party is willing and able to repre-  
9 sent himself as required, and is only acting in a capacity of Private Attorney General as is per-  
10 mitted under the citizen suit and civil rights provisions of the statutes.

11 15. Defendants agree to hold harmless all persons and parties with a superseding Consent  
12 Judgment permitting these Defendants to implement a remedy in accordance with the terms of  
13 the old consent decree, the revised statement of work, and ROD 6.

14 16. Motion to be declared Project Manager of the remedy pursuant to the Statement of Work.  
15

16 **RECAPITULATION OF DISCLOSURE STATEMENT**

17 **Waiver of Protections of "Corporate Shield"**

18 17. Because it would be unjust for the Court to permit the corporate form to stand, that defen-  
19 dants submit that for the purpose of resolving these matters and pertaining strictly to the resolu-  
20 tion of this litigation, that defendants are in fact indistinguishable alter egos and one and the  
21 same persons until the conclusion of this case. "As long as the statue doesn't interfere with the  
22 cleanup effort at the mine, Sugarek said Arman should be free to build it -- it is his property."  
23 Rick Sugarek, EPA Project Manager, Iron Mountain Mine Superfund site.  
24 Wednesday, June 11, 2008 Redding Searchlight.  
25

26 **DECLARATION OF DEFENDANTS INTENTION TO REPRESENT THEMSELVES**

27 18. We declare that we will represent ourselves./s/ John F. Hutchens and T.W. Arman  
28

1 19. This matter comes before the Court in a test of the veracity of the ideals of the Constitution  
2 of the United States and the Bill of Rights and the guarantee of a Republican form of govern-  
3 ment. Come now these defendants with claims of great treasure and pleas for asylum.

4 20. "To no one will we sell, to no one will we refuse or delay, right or justice." Magna Carta.  
5 For far to long, the falsity of the "double swaddling" of judicial deference owed to the EPA as  
6 the exclusive arbiter of the public interest has been found to further endanger the public health  
7 and the environment. Pursuant to the provisions of the Community Right to Know Act and  
8 other statutes, we say that each person has equal standing to the fair and honest legal and  
9 scientific considerations of environmental protection and defense, and equal protection and due  
10 process for all decisions affecting our communities' common future.

11 21. Defendants submit that the questions raised by these proceedings must include the determi-  
12 nation of collective responsibility for the protection of human health and the environment, even  
13 when one agency is responsible for decisions and actions that may result in potential endan-  
14 germent to human health and the environment, or fail to fulfill the stated objectives of the re-  
15 medial actions in compliance with the National Contingency Plan, or fail to fulfill the objec-  
16 tives of the Resource Conservation and Recovery Act, or fail to provide a remedy, and it can be  
17 shown that such decisions and actions may objectively be shown to be arbitrary and capricious,  
18 and by a preponderance of the evidence are shown to yield an absurd and illogical result.

19 22. Defendants submit that by every objective analysis of the decisions and actions of the EPA  
20 that the Records of Decisions at the Iron Mountain Mine superfund site were arbitrary and ca-  
21 pricious. On the behalf of the people at the EPA who were just doing their jobs the best that  
22 they could we submit that arbitrary and capricious is a natural state for the human condition,  
23 and find no fault in a finding of arbitrary and capricious.

24 23. Defendants demand a fair consideration of the defenses raised and exoneration forthwith.  
25 Defendants submit that it is each and every citizens right and duty to raise the alarm in recogni-  
26 tion of an environmental catastrophe or human health emergency, and the recourse of the peo-  
27 ple for the failure of the government to fulfill its obligations to remedy pollution or to perform  
28 in the public interest or public benefit, demands an accounting and the redress of grievances.

1 24. Defendants submit that prejudice and segregation of these defendants has contributed to the  
2 discrimination suffered by acts of agents and agencies of the United States under color of law.

3 25. Defendants submit that by every measure of reason or logic in the scientific consideration  
4 of the problem of pollution at the Iron Mountain Mine superfund site, of the alternatives con-  
5 sidered, and the remedial actions selected, the only action available when the remedial actions  
6 began or action that is available now that is shown to be fully protective of human health and  
7 the environment is to remedy the pollution and finish the mining, and further that the outcome  
8 of any other alternative including the presently implemented plan yields an absurd result when  
9 a remedy is available and the remedial actions as such are then arbitrary and capricious.

10  
11 **RECAPITULATION OF STATEMENT IN SUPPORT OF JOINDER**

12 26. Joining Party attests that he is a real party in interest to this matter and further attests that  
13 the interests are not merely economic interests. Joining party claims joinder as by right.

14  
15 **RECAPITULATION OF STATEMENT OF INTERVENTION**

16 27. Joining Party submits that nowhere in the Plaintiffs opposition is the showing of whether  
17 the Joining Party's interest is adequately represented by existing parties, or whether, "as a prac-  
18 tical matter", the failure to join the party would "impair or impede the person's ability to protect  
19 that interest" ever addressed. Joining Party further submits that 9613 provides for no other ob-  
20 jection to such claim of Intervention as a matter of right as provided by the statute.

21 28. The Solid Waste Disposal Act also provides at 6921(b)(3)(A)(ii), "suit may be brought  
22 against the EPA for failure to perform a non-discretionary act or duty under RCRA. 42 U.S.C.  
23 § 6972(a)(2)." CERCLA also provides for citizen suits for failures to perform, such as when:  
24 "Each remedial action shall utilize permanent solutions and alternative treatment technologies  
25 or resource recovery technologies to the maximum extent practicable. (NCP §300.430(f)(5)(ii))  
26 The "double swaddling" of judicial deference that the EPA has enjoyed for some 25 years at  
27 Iron Mountain Mine needs to be changed. This unpleasant task has been left to these defen-  
28 dants. The imagery is self explanatory.

1                   **RECAPITULATION OF JOINING PARTY’S LEGAL INTEREST**

2 29. Defendants have asserted their right and intention to perform work and engage in business,  
3 work that is by definition Resource Conservation and Recovery as defined in 42 U.S.C § 6901.

4 30. The “subject” of this action is the Acid Mine Drainage and the resulting High Density  
5 Sludge, which contain substantial quantities of valuable heavy metals, particularly copper,  
6 (which IMMI was substantially recovering before the EPA action effectively terminated the  
7 recovery of this metal from the AMD).

8 33. Therefore, Joining Parties’ interest is substantially more than a mere “interest in property”,  
9 and the Joining Parties’ interest relates explicitly to the “subject of the action”.

10 31. Defendants are aware of potential liability for future costs and have sought the cooperation  
11 of the Plaintiffs to form a “Resource Conservation and Recovery Panel” as provided by 42  
12 U.S.C §§ 6901 et seq., in order to assure that the best technologies and abilities are combined to  
13 achieve the goals of environmental protection and habitat restoration.

14 32. Defendants have delegated to Joining Party a substantial business and fiduciary responsibil-  
15 ity including rights under contract of both Agency and Factor, and with this is the responsibility  
16 for achieving a fair and just conclusion to this case.

17                   **ANSWER TO REQUEST FOR STATUS CONFERENCE**

18 33. Defendants submit that the allegation of fraud upon the Court precludes delay of a status  
19 conference. Defendants submit that joinder is by right. Defendants submit that Mr. T.W. Arman  
20 has mailed his own signed copies of any documents required. Defendants submit that they have  
21 agreed to be tried as joint venturers. Defendants have declared *Res Judicata* with the State. De-  
22 fendants have placed motions in an order to best serve the justice sought. It is entirely clear that  
23 the Defendants seek the full protections and aid and assistance of the State by joinder. All other  
24 matters raised should be resolved in the full light of the Court. Defendants object to desultory  
25 allegations of merit-less and vexatious claims. Request for expedited status conference with  
26 Court confirmation of joinder and acknowledgment of agreement to enter into settlement nego-  
27 tiations with joining party through the right of Agency on behalf of Defendants for settlement  
28 and Consent Judgment and implementation of a final remedy and remedial action plan.

**MOTIONS**

34. Motion for orders designating joining party as Project Manager of the remedy in accordance with the revised Statement of Work and Rod 6

35. Motion for orders to expedite adjudication of Title by Patent from the United States.

36. Motion for judicial review.

Signed \_\_\_\_\_

November 19<sup>th</sup>, 2008

John F. Hutchens



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**ORDER**

It is hereby ordered that the joining party is Project Manager of the ROD 6 remedy.

It is further ordered:

Date: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE  
for the EASTERN DISTRICT OF CALIFORNIA