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8 **In the UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT**
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10 **In re: JOHN HUTCHENS et al** Fed. R. App. P. 3, 4, 8, 10, 15, 16, 18, 24, 21, 27
11 **TWO MINERS & 8000 ACRES OF LAND** Circuit No.09-71150, Honorable Justices:
12 **(T.W. ARMAN and JOHN F. HUTCHENS,** O,SCANNLAIN, SILVERMAN & BYBEE
13 **IRON MOUNTAIN MINES, INC.,** CONSTITUTIONAL CHALLENGE
14 **real parties in interest), “Two Miners”** EMERGENCY INJUNCTIVE RELIEF
15 under God, indivisible, and on behalf of a class INCIDENTAL & PEREMPTORY MANDAMUS
16 **Petitioners & Plaintiffs** FILED UNDER THE GREAT SEAL.
17 v. CREATION & ABSOLUTE APPOINTMENT;
18 **USDC-CES ,** Respondent ESSENTIAL PRODUCTS ADMINISTRATION
19 **UNITED STATES: TITLE 18; Defendant** & COMMISSIONS OF FEMA AND THE EPA.
20 **CALIFORNIA: SEC. 19; Defendant** EVIDENCE IN SUPPORT OF JUDGMENT

21 **VIOLATIONS: § 241., § 242., § 245., § 3729. AND AJUDICATION ON THE MERITS.**
22 **WRIT OF RIGHT! RCRA CITIZEN SUIT!** First amended complaint of manifest injustice,
23 **RWQCB; GOVERNMENT CODE LIABLE** Civil No. 2:91-cv-00768 & Circuit No. 09-70047,
24 **CONSTITUTIONAL VIOLATIONS!** Concurrent jurisdictions, interventions by right.
25 **CIVIL RIGHTS VIOLATIONS!** Corporeal violation of the Public Trust;
26 **PRIVATE PROPERTY VIOLATIONS!** § 706 §2201 §2403 § 2409a §2410 §2680
27 **PUBLIC TRUST VIOLATIONS!** Preliminary injunctive relief, §3006A(a)(1)(D)
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Constitutional challenge. First amended complaint of manifest injustice. Circuit No. 09-71150
EMERGENCY INJUNCTIVE RELIEF INCIDENTAL AND PEREMPTORY MANDAMUS
APPEAL FOR EXTRAORDINARY WRITS IN THE NATURE OF MANDAMUS

1 **MORE DEFINITE STATEMENT FOR INJUNCTIVE & MANDAMUS RELIEF**

2 (1) This is a Civil Action against violation of the Constitution.

3 (2) This is a Civil Action against an unfair and unjust law, void for vagueness, and founded on
4 *illegitimate animus* in Congress, and against establishment of religion by State and Federal law.

5 (3) This is a Civil Action founded against civil rights and property rights violation by a regula-
6 tion of an executive department; and contract, express or implied, with the government;

7 (4) This is a Civil Action with actions for damages, liquidated or unliquidated, pertaining to
8 those matters of this case that are sounding in tort. The words 'sounding in tort' are in terms ref-
9 erable to these four classes of cases, and specifically do not imply that any civil rights viola-
10 tions, whether unconstitutional violations, congressional violations, or violations of any rights
11 by regulation of an executive department; or violation of any rights by any contract, expressed
12 or implied, with the United States Government, whether or not sounding in tort, are outside the
13 jurisdiction of this Court. Accordingly, the fact that plaintiff has presented an administrative
14 tort claim to the EPA is relevant to suit in this court. Accordingly, the fact that plaintiff has pre-
15 sented a Takings Claim in the Court of Federal Claims is relevant to suit in this court.

16 Plaintiff exhausted all administrative remedies. TRUE!

17 Plaintiff filed an administrative claim (Standard form 95) and was denied. TRUE!

18 Plaintiff notified agency inspector general of allegations of fraud, malice, deceit. TRUE!

19 Plaintiff filed tort claims as counter-claims in district court on motions to reopen.

20 COURT ordered motions stricken as improperly captioned. APPEALED

21 Plaintiffs filed emergency Appeals Court review for reckless negligent endangerment, manda-
22 mus denied, other motions moot. Original judicial remedy: case closed...

23 ABSOLUTE REMEDIES, CIVIL ACTION; TAKINGS: COURT OF FEDERAL CLAIMS

24 ABSOLUTE REMEDIES, CIVIL ACTION; TORTS: NINTH CIRCUIT COURT OF APPEALS.

25 Declarations; the taking of private property for the public benefit requiring the payment of just
26 compensation; *quo Avarranto*

27 Constitutionality; **NOT**; *peremptory mandamus*

1 Law of Congress, illegitimate purpose and intent; void for vagueness; *illegitimate animus*, ad-
2 judication on the merits. *writ of error coram nobis*. **CONSTITUTIONAL CHALLENGE!**
3 Contract, express or implied, with the government; **YES**, *writs of prohibition, equitable estoppel*.
4 Regulation of an executive department; *writ quo Warranto, incidental & peremptory mandamus*
5 Actions for damages, liquidated or unliquidated;

6 **MONEY MANDATED BY THE CONSTITUTION**

7 Actions for Errors; *coram nobis*; errors of impunity and miscarriage of justice, manifest injustice;
8 Actions for Writs; equitable estoppel; prohibition; quo Warranto; peremptory mandamus;
9 The taking of private property for the public benefit requiring the payment of just compensation;

10 **WRIT OF RIGHT! RCRA CITIZEN SUIT!**

11 False Claims; Conspiracy; Deprivation of Rights under color of law; Federally Protected Rights
12 Trespassing; Usurpation, Despotism and Tyranny; reckless negligent endangerment;
13 Kidnapping of a corporation; joint repository of hazardous waste on private property.
14 Taking of private property for the public benefit requiring the payment of just compensation.

15 **CONCURRENT JURISDICTIONS, NINTH CIRCUIT: THREE JUDGE COURT;**

16 The Takings Clause is a money-mandating provision of the Constitution

17 Preseault v. ICC, 494 U.S. 1, 11-12 (1990). 9/

18 Specifically, the Court of Federal Claims does not have jurisdiction over suits against
19 the Government for discrimination, whether stated as a violation of equal protection, due
20 process, or otherwise. Mullenberg v. United States, 857 F.2d 770, 773 (Fed.Cir. 1988). The
21 court lacks jurisdiction over claims for fraud, Brown v. United States, 105 F.3d 621, 623 (Fed.
22 Cir. 1997), nor does the court have jurisdiction over alleged violations of criminal statutes,
23 Campbell v. United States, 229 Ct. Cl. 706, 707 (1981).

24 The Court of Federal Claims has no power to adjudicate torts, Shearin v. United
25 States, 992 F.2d 1195, 1197 (Fed. Cir. 1993); Eastport S.S. Corp. v. United States, 178 Ct. Cl.
26 599, 614, 372 F.2d 1002, 1013 (1967), whether brought under the FTCA or otherwise.

27 The Tucker Act specifically excludes tort claims from the jurisdiction of the [Federal Claims]
28 court, 28 U.S.C. § 1491(a)(1), and the FTCA vests exclusive jurisdiction over tort actions in the

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1 district courts, id. § 1346(b). Accordingly, the fact that plaintiff has presented an administrative
2 tort claim to the EPA is relevant to his suit in this court.

3 The question was first considered in *Langford v. United States*, 101 U.S. 341 , 25 L. ed. 1010,
4 under the statute above cited, giving the court of claims power to hear and determine 'all claims
5 founded upon any law of Congress, or upon any regulation of an executive department, or upon
6 any contract, express or implied, with the government of the United States.' The suit was
7 brought to recover for the use and occupation of certain lands and buildings of which possession
8 had been forcibly taken by agents of the government, against the will of Langford, who claimed
9 title to the lands. It was held that the act of the United States in taking and holding possession
10 was an unequivocal tort, and a distinction was drawn between such a case and one where the
11 government takes for public use lands to which it asserts no claim of title, but admits the owner-
12 ship to be private or individual, in which class there arises an implied obligation to pay the
13 owner its just value. 'It is a very different matter where the government claims that it is dealing
14 with its own, and recognizes no title superior to its own. In such case the government, or the of-
15 ficers who seize such property, are guilty of a tort, if it be in fact private property.' It was held
16 that the limitation of the act to cases of contract, express or implied, 'was established in refer-
17 ence to the distinction between actions arising out of contracts, as distinguished from those
18 founded on torts, which is inherent in the essential nature of judicial remedies under all systems,
19 and especially under the system of the common law.' [182 U.S. 222, 227] The case was rested
20 largely upon that of *Gibbons v. United States*, 8 Wall. 269, 19 L. ed. 453, in which an army con-
21 tractor who had agreed to furnish certain oats at a fixed price had, after the delivery of part of
22 the amount, been released from the obligation to deliver the balance. He was, however, carried
23 before the military authority, and, influenced by threats, agreed to deliver, and did deliver, the
24 full quantity of oats specified in the contract. He brought suit for the difference between the con-
25 tract price and the market price of the oats at the time of delivery. It was said that 'if such pres-
26 sure was brought to bear upon him as would make the renewal of the contract void, as being ob-
27 tained by duress, then there was no contract, and the proceeding was a tort for which the officer
28 may have been personally liable,' but that it was not within the court of claims act.

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1 Nor can the settled distinction, in this respect, between contract and tort, be evaded by framing the
2 claim as upon an implied contract.' 'An action in the nature of assumpsit for [182 U.S. 222, 228] the
3 use and occupation of real estate will never lie where there has been no relation of contract be-
4 tween the parties, and where the possession has been acquired and maintained under a different or
5 adverse title, or where it is tortious and makes the defendant a trespasser.' No distinction was no-
6 ticed between the phraseology of the original act and the Tucker act, though it seems to have been
7 assumed that the case was one for the recovery of 'damages' sounding in tort.

8 There are no expressed or implied promises from the EPA to Arman, Hutchens, or IMMI.
9 The EPA never had permission from Ted Arman or IMMI, the District Court ordered it.
10 All is retained which has not been surrendered. "In every stage of these oppressions we have Petitioned for
11 Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury."

12 **VOID AS UNCONSTITUTIONAL AN UNNECESSARY AND IMPROPER LAW**

13 **The rule must be discharged.**

14 ***writ of unspeakable errors, divide et impera!* RELIEF: UNCONSTITUTIONAL LAW IN**
15 **VIOLATIONS OF FIRST, FOURTH, AND TENTH AMENDMENT PROTECTIONS.**
16 **§ 3729. FALSE CLAIMS; MISTAKE! PROHIBITION! EQUITABLE ESTOPPEL!**

17 Plaintiff's Pray for Declaratory and Preliminary Injunctive Relief, Damages according to Proof.
18 quo Warranto Incidental and Peremptory Mandamus filed under the Great Seal of the United States.

19 June 7, 2009 Signature: _____

20 /s/ John F. Hutchens, *pro se; sui juris*; Tenant in-Chief, Warden of the Forests & Stannaries

21 June 7, 2009 Signature: _____

22 /s/ T.W. Arman, *pro se; sui juris*; sole stockholder of
23 Iron Mountain Mines, Inc. President, Chairman, Chief Executive Officer.

24 This last act is the signature of the commission.

25 June 7, 2009 Signature: _____

26 /s/ **John F. Hutchens,**

27 **Original Absolute Appointment to the Commissions of FEMA and the EPA.**

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