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8 UNITED STATES COURT OF APPEALS
9 NINTH CIRCUIT

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

15 Defendants

16 v.

17 UNITED STATES OF AMERICA et al
18 Does 1 to 100

19 Plaintiffs

20 TWO MINERS & 8000 ACRES OF LAND
21 (T.W. ARMAN and IRON MOUNTAIN
22 MINES, INC. et al)
23 and on behalf of all others similarly situated
24 under GOD

25 Defendants

26 v.

27 (STATE OF CALIFORNIA, On behalf of the
28 California Department of Toxic Substances
Control and the California Regional Water
Quality Control Board for the Central Valley
Region)
Does 1 to 100

Plaintiffs

Civil No. 2:91-cv-00768-JAM-JFM

CIRCUIT RULE 27-3 RULE 15

QUO AVARRANTO

WRIT QUO WARRANTO

INCIDENTAL MANDAMUS

DETINUE SUR BAILMENT

811 CODE OF CIVIL PROCEDURE

PRELIMINARY INJUNCTIVE RELIEF

REPLY TO ORDER HON. JOHN A. MENDEZ

Date:

Time:

Courtroom No.

Hon.

1 **PETITIONER’S RELATOR INFORMATION FOR ORDER INQUIRIES**

2 1. Pursuant to item 1, petitioner submits that joinder is by right. The timeliness of such joinder
3 is contingent only upon the timeliness of the defendant’s petition and motion to reopen this
4 case, and for which no time barred limitation exists for fraud upon the Court.

5 2. Petitioner submits that for the reasons elaborated upon in the previously filed or received
6 pleadings are compelling justification for this Court to reopen the case in the interest of justice.

7 3. Pursuant to item 2, petitioner submits that any instance of a signature from defendant T.W.
8 Arman that may not be original were due to the exigencies and expediencies necessary for
9 these parties communications, which were accomplished by fax machine per the requirements
10 of Mr. Arman, and that any document that may not bear Mr. Arman’s original signature did so
11 at Mr. Arman’s request because of the poor quality of the facsimiles, that Mr. Arman did sign
12 an original facsimile of every document prior to its submission to the Court, and further that
13 Mr. Arman has endeavored to personally serve an original of every document necessary to as-
14 sure proof of his personal participation in each and every motion, claim and allegation.

15 4. Petitioner further submits that Mr. Arman has granted rights and responsibilities of agency
16 to the petitioner for the purpose of resolving this matter, and that Mr. Arman has specifically
17 instructed the petitioner to affix his signature to original documents so they may remain legible.

18 5. Pursuant to item 3, petitioner submits that Mr. Logan has repeatedly reiterated his refusal to
19 further represent either Mr. Arman or IMMI, as indicated by the email correspondence attached
20 with the Order as exhibit A.

21 6. Petitioner submits that Mr. Arman has offered compelling rationale for a Hearing by this
22 Court on the requests for “Waiver of the Corporate Shield” and the “Act of GOD” innocent
23 landowner defense.

24 7. Petitioner further submits that it would be an onerous burden upon those defendants to re-
25 quire Mr. Arman to transfer the property into his own name solely for the purpose of resolving
26 this matter in the absence of any willing and capable attorney to represent IMMI.

27 Pursuant to item 4, petitioner understands the following conditions to be predicated upon the
28 granting of hearing(s) to consider the matters raised in any of the recent filings.

1 8. Pursuant to 4 (A), petitioner agrees that many of the matters raised by the pleading are com-
2 plex and deserve clarification, and petitioner agrees to elaborate and clarify any requests or mo-
3 tions that plaintiffs specify are in need of clarification and to what extent such clarification is
4 required to allow the Court and the parties to understand them and to respond.

5 9. Pursuant to 4 (B), petitioner agrees to state with specificity the facts upon which he relies in
6 making his allegations and requests, and agrees to submit to the Court citations to the adminis-
7 trative record or to sworn affidavits in compliance with Fed. R. Civ. P 9(b) and 11(b). Peti-
8 tioner hereby declares on information and belief, in conformance with Fed. R. Civ. P 9(b) that
9 every allegation of fraud, intent, or malice stated with particularity in the pleadings is true. Fur-
10 thermore, as to all representations made to the Court, petitioner hereby certifies that to the best
11 his knowledge, information, and belief, formed after an inquiry reasonable under the circum-
12 stances-

13 (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary
14 delay or needless increase in the cost of litigation;

15 (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by
16 a non-frivolous argument for the extension, modification, or reversal of existing law or the es-
17 tablishment of new law;

18 (3) the allegations and other factual contentions have evidentiary support or, if specifically so
19 identified, are likely to have evidentiary support after a reasonable opportunity for further in-
20 vestigation or discovery; and

21 (4) the denials of factual contentions are warranted on the evidence or, if specifically so identi-
22 fied, are reasonably based on a lack of information or belief.

23 10. Pursuant to 4(C), petitioner agrees to comply with Local Rule 78-230(k) and identify with
24 specificity the prior ruling, and the changed facts or circumstances which he contends justify
25 reconsideration. To the extent that this request is made in regards to the apparent suggestion
26 that these pleadings constitute an application for a rehearing, petitioner submits that no such
27 application was made, and that all claims to rescind prior judgments are premised on Local
28 Rule 60, for fraud upon the Court.

1 11. Pursuant to 4(D), petitioner agrees to address which of the issues raised by petitioner that
2 petitioner wishes plaintiffs to respond to. Petitioner submits that in the unfortunate eventuality
3 that plaintiffs continue to contest these matters, that petitioner and defendants request an expedited
4 hearing date on every claim raised by the pleadings, and that petitioner and defendants
5 object to any effort by the plaintiffs to delay providing an answer to the counterclaims.

6 12. Pursuant to item 5, petitioner submits that the pleadings claim *Res Judicata* with the State
7 and State agencies and employees, in as much as the memorandum in support of the consent
8 decree purported to waive any remaining claims by those support agencies. To the extent that
9 the consent decree represents a litigatory failure to obtain the complete relief as required under
10 CERCLA, petitioner submits that any remaining claims against these defendants is made under
11 an erroneous interpretation of law. Petitioner further submits that petitioner and defendants
12 have stated in the pleadings upon information and belief that the federal government and particularly
13 the Department of Justice and Environmental Protection Agency are the principle architects of plaintiffs
14 claims against the defendants, and that the State agencies are “riding on the coat-tails” in this
15 matter. Petitioner reserves the right to consider making counter-claims against the State and
16 State agencies and agents in the unfortunate eventuality that those parties continue to support
17 the federal misadventure in disregard for the public health and environmental safety interests
18 of the people of California.

19 13. Petitioner submits that communication with the successors in interest to the previously settling
20 defendants has been established to inform them of this matter and the possibility that the Court
21 might consider the motion to vacate the consent decree. The principal settling defendant
22 (Aventis Crop Sciences) reported to its stockholders in 2001 that with the settlement of the
23 consent decree in this matter, that the transactions of the purchase of Mountain Copper Co. assets
24 and the sale of Iron Mountain Mines to these remaining defendants, and the subsequent
25 remediation work, litigation, and final settlement, was still a profitable transaction.

26 14. Petitioner further submits that successor in interest Bayer Crop Sciences counsel has informed
27 petitioner that they will not seek to join the remaining defendants in this action unless
28 the Court elects to join those parties in this action.

1 **MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTIVE RELIEF**

2 15. Petitioner submits that this matter raises fundamental philosophical questions of govern-
3 mental power and its constitutional application, and fundamental philosophical questions of
4 environmental science, environmental justice, and environmental law.

5 16. It is this petitioners observation that the vigilante mentality of environmental activism that
6 motivated many of the early decisions regarding the remediation activities undertaken at Iron
7 Mountain Mines, actions that were taken with an agenda that is in excess of the executive man-
8 date of the legislation and beyond a scientifically rationale and justifiable response.

9 17. Petitioner is sympathetic and considers it appropriate to make a comparison to the current
10 debate over nuclear power generation, wherein the environmental community has become
11 fragmented as a result of some formerly staunch opponents of nuclear power changing their
12 positions and adopting a pragmatic acceptance and support for nuclear power in the face of the
13 dire consequences of global warming from coal power. A similar situation now exists in re-
14 gards to the mining industry in general, which generates more solid wastes than all other indus-
15 tries combined, and which has been notorious for its poor stewardship of the environment in the
16 past. Nevertheless, as the realization of the biological basis for Acid Mine Drainage have be-
17 come apparent and the irreversibility of these biological processes has become clear, the EPA
18 and DOJ have persevered in pursuing a fundamentally failed approach to the problem and have
19 sought to conceal the failure by means and methods that violate the law and the defendants civil
20 and constitutional rights.

21 18. It is apparent from the administrative record that an agenda existed in the remediation ef-
22 forts of the Iron Mountain Mine Superfund site and that the intention was not only to undo the
23 pollution and the natural resource damages, but to attempt to undo the mining.

24 19. Petitioner submits as an example of this intention the purported “remedy” as it is described
25 in ROD 1, which was the filling of the mine with lightweight cellular concrete. This supposed
26 remedy was promoted as though it was based upon some valid scientific basis, when in fact it
27 was based entirely upon speculations and unproven theories that were ultimately abandoned as
28 fundamentally flawed and ill-conceived. Subsequent to this abandonment, the EPA has failed to

1 offer any alternative remedy, and resigned itself to a removal action (treatment program) that is
2 estimated to require operation and maintenance for at least 3000 years.

3 20. The IMMI proposal on the other hand, which was dismissed with an assortment of excuses
4 despite its proven viability, its recommendation as viable and effective by the independent
5 party retained by the EPA to perform a confidential enforcement analysis, and its endorsement
6 by the responsible party, may reasonably be expected to remedy the pollution problem in as
7 little as 3 to 9 years, and to be substantially complete within less than 40 years.

8 21. Further support for the IMMI proposal is available from the EPA itself, whose guidance
9 documents regarding hard rock mining support recycling and reuse of mine waters in mining
10 extraction and beneficiation processes, and particularly encourage implementation of insitu
11 mining of low grade deposits and abandoned tunnels and shafts from which conventional is no
12 longer safe, profitable, or which may be best suited to solution mining technologies.

13 22. Petitioner submits that the only logical explanation for this failure to implement a remedy is
14 a bias against any form of mining, and a fundamental philosophical opposition to the resump-
15 tion of mining however passive as anathema to environmentalist sensibilities that the remedy to
16 pollution from mining might require a resumption of mining per se. If such a general bias is not
17 the explanation, then it may logically be assumed that some personal animus exists towards
18 these defendants, or that the government agents and agencies are simply intent on maintaining
19 the franchise created by agency actions at this site, and the proverbial “pot of gold” at the end
20 of the rainbow, in the form of the \$514 million in trust funds due in the year 2030.

21 23. As reasonable as this explanation is for the course of events in this matter, what remains is
22 the unconstitutional violation of these defendant’s fundamental property rights, the uncon-
23 scionable stigmatic injury of the properties known as Iron Mountain Mines and the company
24 Iron Mountain Mines, Inc., the denials of due process and equal protection, and the infamy,
25 defamation, and lost opportunity of T.W. Arman, who thought he bought a gold mine,

26 24. Petitioner submits upon information and belief that it is within the powers of this Court to
27 rectify the manifest injustice of the past without reviewing the allegation of fraud upon the
28 Court or vacating the Consent Decree or other prior Orders, whether by acknowledgment of an

1 abuse of discretion or some other appropriate judicial mechanism, to grant these defendants the
2 innocent landowner defense, to instruct the parties to undertake good faith negotiations to im-
3 plement a remedy at Iron Mountain Mines consistent with the purposes of CERCLA, RCRA,
4 CWA, CAA, NCP, and State environmental laws, to install the petitioner as Project Manager of
5 the remedy in a manner consistent with the existing provisions of the Statement of Work and
6 the financial arrangements provided therein and in acknowledgment of the responsibilities dele-
7 gated by the property owner under a joint venture agreement with this petitioner, to refer this
8 matter to the Court of Federal Claims to adjudicate the Taking of Private Property for the Pub-
9 lic Benefit requiring Just Compensation, to refer this matter to the Ninth Circuit for considera-
10 tion of the Constitutional Questions, Abuse of Discretion, Breach of Title by Patent Deeds,
11 Breach of General Mining Law, Trespass, Detinue Sur Bailment, Inverse Condemnation, Join-
12 der and Injunctive Relief, and to grant such other relief as the Court finds just and proper.

13 25. In support of the defendants proposal to the EPA to resume mining at Iron Mountain Mines
14 as a final remedy to the pollution, petitioner submits that new technologies and new uses for the
15 metals and minerals contained in the AMD and the HDS are of primary importance and a criti-
16 cal component of the very sorts of technologies that it is necessary for our society to embrace
17 and adopt, however difficult the economic transition may be, as imperative to halt global warm-
18 ing from greenhouse gas emissions and the nations dependence on foreign oil. Prime examples
19 include utilizing cadmium in the forms of cadmium sulfide and cadmium telluride for photo-
20 voltaic solar cells, utilizing zinc in the form of zinc oxide for zinc battery/fuel cells for the
21 wide-spread adoption of electric vehicles. We plan to proceed with these environmentally bene-
22 ficial technologies, but the EPA has prevented it. This Court has jurisdiction and authority to
23 compel the EPA and DOJ to rectify the Errors of Impunity and Miscarriage of Justice made
24 into the Manifest Injustice of the Consent Decree and the Statement of Work.

25 More details about the future of Iron Mountain Mines is on our website:

26 www.ironmountainmine.com

27 12/26/2008

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John F. Hutchens Pro Se, private Warden of the Forest

1 **ORDER**

2 **JURISDICTION OF IRON MOUNTAIN MINES, INC.**

3 **QUO AVARRANTO; WRIT QUO WARRANTO**

4 Quo warranto is intended to prevent a continuing exercise of an authority unlawfully asserted
5 because quo warranto serves to end a continuous usurpation, no statute of limitations applies to
6 the action. (People v. Bailey (1916) 30 Cal.App. 581, 584-585.)

7 Detinue Sur Bailment to the Relator

8 Office of Project Manager to the Petitioner

9 It is so Ordered:

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26 _____
27 Judge for the Ninth Circuit
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