WALDO MINING DISTRICT
...TO PRESERVE, PROTECT, & PROMOTE MINING

Post Office Box 1574
Cave Junction, Oregon 97523
On the web at: www.waldominingdistrict.org

IF IT CAN'T BE GROWN IT MUST BE MINED!

FILE # WMDNEWS 02-19

PRES.: TOM KITCHAR ✦ VICE PRES.: DON YOUNG ✦ TREASURER: MARK WAGNELI ✦ SECRETARY: SARAH BOHMKER

★ FEBRUARY 2019 WMD NEWSLETTER ★

LITIGATION UPDATE

BOHMKER vs OREGON
SB 838 / SB 3
LITIGATION

U.S. 9TH CIRCUIT COURT DENIES *"EN BANC"* APPEAL

BOHMKER (et al) vs OREGON IS A UNITED EFFORT BY THE WALDO & GALICE MINING DISTRICTS AND OREGON MINERS AGAINST OREGON'S PERMENANT PROHIBITION ON ALL MOTORIZED INSTREAM PLACER MINING IN STREAMS DESIGNATED AS *ESSENTIAL SALMON HABITAT* (ESH).

AFTER A HEARING ON MARCH 8, 2018, THE U.S. 9TH CIRCUIT ISSUED THEIR **2-1 DECISION AGAINST THE MINERS** ON SEPT. 12, 2018.

ON SEPT. 27, 2018, THE MINERS FILED A REQUEST FOR AN "EN BANC" (WHOLE COURT) APPEAL, WHICH WAS DENIED BY THE U.S. 9TH CIRCUIT ON OCT. 25, 2018. WE NOW HAVE 90 DAYS TO FILE A PETITION IN THE U.S. SUPREME COURT.

ON JANUARY 21, 2019, THE MINER'S FILED A PETITION FOR REVIEW IN THE

U.S. SUPREME COURT

(SEE PAGE 2 FOR MORE ON SB 3…)

EOMA / WMD vs DEQ
LITIGATION

HEARING HELD MAY 10, 2018 IN THE OREGON SUPREME COURT

AFTER 12 YEARS OF LITIGATION AGAINST THE UNLAWFULL OREGON DEQ NPDES 700PM SUCTION DREDGE PERMIT, INCLUDING BEING DECLARED MOOT TWICE BY THE OREGON COURT OF APPEALS, WE FINALLY MADE IT TO THE OREGON SUPREME COURT!

THE COURT CONSISTED OF SEVEN JUSTICES, AND EACH SIDE WAS GIVEN 30 MINUTES TO MAKE THEIR CASE. AT LEAST SOME OF THE JUSTICES SEEMED TO *GET IT* THAT SUCTION DREDGES DISCHARGE *"DREDGED MATERIAL"* (AND THUS ARE UNDER U.S. ARMY CORPS).

AS OF THIS PRINTING THERE IS NO WORD FROM THE OREGON HIGH COURT ABOUT A DECISION.

(SEE PAGE 4 FOR MORE ON NPDES)

IN THIS ISSUE

WALDO'S 167TH BIRTHDAY

April 1st, 2019 will be not only April Fool's Day, it is also the Waldo Mining Districts 167th Birthday!

NEWSLETTERS & DUES

This is the first WMD Newsletter since Sept. 2018. Look at the mailing label on the envelope this News came in and to the right of your name will be a MO/YR number, which is the date your dues were due.

If the label says "01/19" then your dues were due January 2019. In the Sept. '18 News, we gave everyone NOTICE about dues. Many were 2 or more years behind. ***THIS JANUARY 2019 NEWS IS YOUR LAST WARNING…*** if you have not paid your dues by the time the next News is published (probably in the Spring) you will unfortunately be dropped as a Member of the Waldo Mining District. (see page 8 for more)

2019 GENERAL MEETINGS

1ST FRIDAY OF THE MONTH

WMD is currently holding Joint Meetings with the Galice Mining District and we have been holding MONTHLY MEETINGS since FRIDAY, MARCH 2, 2018.

WHEN: 1ST FRIDAY OF THE MONTH, 6-9PM

WHERE: "*REDWOOD*" GRANGE HALL
1830 REDWOOD AVE., G. PASS
(West of the JoCo Fairgrounds on Redwood Ave.)

Meetings start at 6pm with a Pot Luck Dinner.

(Please check with Armadillo Mining before the 1st Fri. of the month to make sure a meeting is scheduled)

NEXT MEETINGS: FRIDAY, JAN. 4, FEB. 1, MAR. 1, APL. 5, MAY 3, ETC.

BOHMKER v OREGON

PETITION TO THE U.S. SUPREME COURT

BACKGROUND: In 2013 during the 77th Legislative Session, the Oregon Senate passed Senate Bill 838 (SB 838) which then passed in the House and was signed into law by the infamous Governor Kitzhaber that summer.

Among other things, SB 838 placed a "five year moratorium" on the use of all motorized placer mining equipment in streams designated as Essential Salmon Habitat (ESH) by the Dept. of State Lands (DSL). SB 838 also called for a "Governor's Study Group" which was to meet and make recommendations to the 2015 Legislature concerning the future of placer mining in Oregon in ESH streams.

The Study Group met seven times in 2014 and could not reach agreement. As the 2015 Legislature did nothing to alleviate the situation, our only hope lay in the courts and litigation.

THE LITIGATION: On Oct. 16, 2015, a Complaint was filed (BOHMKER (et al) v. OREGON) in U.S. Federal Court, Medford (OR) District by a coalition of mining organ-izations and individual miners at the behest of the Waldo and Galice Mining Districts (i.e.; the clients).

On Feb. 18, 2016, a Hearing was held in the Medford District Court and a Decision was issued **March 29, 2016,** by Magistrate Judge Mark Clarke. In his Decision, although supposedly sympathetic to the miners, Magistrate Clarke upheld SB 838 ruling that SB 838 was "reasonable environmental regulation" and that miners were still free to work "by hand".

On July 14, 2016, the Miners filed an Appeal in the U.S. 9th Circuit Court to overturn SB 838 and the Medford Court Decision. This was followed by numerous response briefs filed by the state, enviro-intervenors, and numerous amicus curie (Friends of the Court) briefs . . . all of which had to be replied to by the Miners and added months to the process.

In the summer of 2017, Oregon's 79th Legislative Assembly passed Senate Bill 3 (SB 3) which was signed into law that summer by Governor Brown. SB 3 repealed SB 838 and the 5-year moratorium; and replaced it with a "permanent prohibition" on the use of any or all motorized placer mining equipment in ESH streams.

SB 3 caused another round of briefs regarding whether BOHMKER v. OREGON was moot as SB 838 had been repealed; and luckily the Miners prevailed and the court agreed that if anything, SB 3 was the same issue but worse.

On March 8, 2018, a hearing was held in the U.S. 9th Circuit Court in Portland, OR.. **On Sept. 12, 2018,** the U.S. 9th Circuit issued a 2-1 Decision in favor of Oregon and SB 3 stating that the prohibition on motorized equipment in certain areas was "reasonable" as miners could still work by hand.

On Sept. 27, 2018, the Miners filed a Request for *En Banc* Rehearing in the U.S. 9th Circuit. [NOTE: There were three judges at the Hearing on March 8th, and the court issued a 2-1 Decision (i.e.; 2 judges ruled for the state, 1 judge was in favor of the Miners). A "en banc" review would be with a panel of 11 judges. We hoped more judges would side with us maybe reaching a 6-5 Decision.]

On Oct. 25, 2018, the U.S. 9th Circuit (by a 2-1 vote by the same 3 judges) DENIED our request for en banc appeal. [It is interesting to note that the Denial mentioned our appeal was sent to the whole court, and that none of the other judges responded in any way.]

AS OF OCT. 25TH, 2018, WE HAVE 90 DAYS TO FILE AN APPEAL IN THE U.S. SUPREME COURT (or give up).

ON JAN. 21, 2019, FILED A PETITION FOR REVIEW IN THE UNITED STATES SUPREME COURT (quitting now is not an option – it took years and 10's to 100's of $1,000's to get to this level; and we realized right from the start back in 2015 that it was likely that we would have to try to be heard in the U.S. Supreme Court as it was unlikely the 9th Circuit would rule in our favor).

FOR ALL PRACTICAL PURPOSES, THIS IS THE PROVERBIAL "IT" . . . FOR ALL THE MARBLES.

The bad part in this is that there's no guarantee that the U.S. Supreme Court will accept our appeal. In fact, only a very small percentage of cases presented to the Court each year are heard . . . but we have to try as if we do nothing then short of a political miracle small-scale in-stream mining (at least) will be a thing of the past. Same thing/result if we lose… (i.e.; forget mining). A loss will nail-open the door for states to ban any kind of mining for any or even no reason claiming "environmental protection" from a mere unproven theoretical "risk".

In the last few years we have seen one bad (anti-mining) Decision after another in at least 2-3 separate cases come from the courts in California (and ultimately by the California Supreme Court in the RINEHART case) regarding the ban on suction dredge (and other) mining. After YEARS of litigation in California and 100's of $1,000s much of the mining community seems stunned and burned out… and who can blame them after almost 10 years of NO DREDGING (although there is hope… and even some "new blood" stepping up and getting involved). As far as we know and ever since the U.S. Supreme Court refused to hear RINEHART there is no other case other than BOHMKER still alive and in court challenging state prohibitions on mining on lands of the United States open to mining under the 1872 Mining Law, as amended.

AGAIN, FOR ALL PRACTICAL PURPOSES, THIS IS THE PROVERBIAL "IT" . . . FOR ALL THE MARBLES . . . … and luckily we're not alone. To date our Legal Fund has received very generous and welcome donations from The New 49ers Gold Prospecting Association and the American Mining Rights Association; along with expectations of several amicus curie briefs filed on behalf of several major mining organizations by nationally known non-profit legal foundations.

EVEN SO, we still need your support . . . ("YOU", the person reading this right now). Please see "How You Can Help" on Page 6 of this Newsletter; and then HELP! Considering the scope of the issue(s), it is expected that "many" so called interested parties will get involved requiring several rounds of briefs, possibly before we even know if the court will hear our appeal.

A Win, depending on the ruling, could possibly (slim chance) over-turn the 5-4 Decision by the Supreme Court in CALIFORNIA COASTAL COMMS. v. GRANITE ROCK (1987) where the court ruled that states did have authority to regulate mining on lands of the United States. The Granite Rock case was solely about whether the state could require a permit for mining – *at all* (it had nothing to do with what might be in a permit or how restrictive it might be). The court ruled that states could regulate mining for environmental purposes as long as such restrictions were "necessary" and "reasonable" through the use of "standards based" permitting systems and NOT through the use of Land Use Plans. (We of course argue that a total prohibition is not "standards based", nor is it "reasonable" or "necessary"; and that in many areas, motorized equipment is required (short of diverting whole streams) as you can't shovel in much more than 3 feet of water and is thus a prohibition on mining and a taking of our property and Mining Rights Granted by Congress.)

Or, a lesser Win might just throw out SB 3 but leave the questions over "reasonable" and "necessary" unanswered.

Unfortunately, the Wheels of Justice turn very slowly. The earliest we can expect to know whether the Supreme Court will hear our case is sometime in the fall of 2019. And if they agree, we might not get heard until 2020 . . . meaning the earliest we might expect a Final Decision would be sometime in 2021-22.

We NEED the support of the whole Mining Community. Please Help and Support our Efforts!

COMPLETE COPIES OF ALL THE BRIEFS FILED IN THIS CASE ARE AVAILABLE ON THE WMD WEBSITE AT: www.waldominingdistrict.org

WHY MINERS HAVEN'T WON - YET

After all the anti-mining litigation in California, along with our battles in Oregon, many have asked "Why don't we (miners) ever win?" Is it our attorney? Are we arguing the wrong arguments? Are we doing something wrong? Are we just throwing more good money away wasting everybody's time, energy & money and getting hopes up just to be shot down? WHAT GIVES?

WE that are working on all this have asked ourselves all these questions – and more. We study the laws, past court decisions, etc…. and to be frank, we don't get it either!

The laws in question seem clear – heck, the 1872 Mining Law is one of the most easy to understand laws on the books, and almost every aspect of mining and mining law has already been settled by the courts. This is not Rocket Science here folks. So why can't we win?

The Mining Law is clear: "…ALL VALUABLE MINERAL DEPOSITS (on most lands of the United States) SHALL BE FREE AND OPEN TO EXPLORATION AND OCCUPANCY…" (30 USC §22). This seems crystal clear… and yet both California & Oregon have seen fit to prohibit the only practical means to access placer deposits found in the beds of active streams.

"THE LOCATORS OF ALL MINING LOCATIONS… SO LONG AS THEY COMPLY WITH THE LAWS OF THE UNITED STATES, AND WITH STATE, TERRITORIAL, AND LOCAL REGULATIONS NOT IN CONFLICT WITH THE LAWS OF THE UNITED STATES **GOVERNING THEIR POSSESSORY TITLE**, *SHALL HAVE THE EXCLUSIVE RIGHT OF POSSESSION AND ENJOYMENT OF ALL THE SURFACE*…" (30 USC §26). And yet, our "exclusive right" is being whittled away in the name of

protecting fish so there's (supposedly) more fish for others to deliberately KILL.

How clear does the law need to be? As far as we are concerned, we should NEVER have had to go to court as what the states are doing is so wrong – it's a big "DUH"!

Same thing with our case against DEQ and the NPDES permitting. The Clean Water Act (CWA) is reasonably clear… a permit is needed for a discharge into waters of the United States. A NPDES permit is required for the "addition" of a pollutant (to the waters). Suction dredges do not "add" anything – in fact, they do just the reverse – they remove pollutants! Everything the dredges process and discharge is already in the water… and yet, DEQ insists we need a NPDES permit.

The CWA also has a permit system for the discharge of "dredged material" or material that acts as "fill" ("fill" being defined as anything that changes the bottom elevation – such as tailing piles). These activities are under the jurisdiction of the U.S. Army Corps of Engineers. The CWA also states that for a single discharge, you either need a NPDES permit, OR a Army Corps permit… NEVER BOTH. And yet the Oregon Court of Appeals ruled suction dredges need BOTH CWA permits! Again, all this seems so clear – another huge "DUH"!

SO WHY CAN'T WE WIN? It's not our attorney; it's not that we haven't correctly argued the law. The only thing left is the courts themselves are so entrenched with socialist liberal judges pushing their twisted agenda and ignoring the laws themselves to further their personal and political aims… Clarence Darrow himself could not win in these courts.

Not much we can do when the courts refuse to understand the clear language of the Mining Law. In the 9th Circuit we had a judge that called our (real property claims) "leases"! And two of them thought it was perfectly reasonable to ban all motorized equipment as we could still work by hand! How do you fight such nonsense?

Unfortunately, MOST of the lands of the United States still open to the Mining Law are in the West… under the jurisdiction of the huge 9th Circuit… the most liberal (and over-turned) court in the land. And unfortunately, they only way around the 9th Circuit is the U.S. Supreme Court.

So, it's not that we "can't win"… but more we haven't won – "yet". We have high hopes the U.S. Supreme Court will accept our case, and have high hopes they will over-turn this nonsense and allow us back in the waters.

Keep your fingers crossed and please support our efforts as we are the only game in town and have the best chance to overturn this travesty of *JUST US* while at least some of us are still alive!

EOMA / WMD vs DEQ LITIGATION

(Cont. from Page 1)

Q: WHICH SECTION OF THE U.S. CLEAN WATER ACT APPLIES TO THE DISCHARGE FROM A SUCTION DREDGE: SECTION 402 (under the EPA), OR SECTION 404 (under the U.S. Army Corps) . . . ?

Since the 1980's, Oregon DEQ has forced suction dredge miners in Oregon to obtain a National Pollutant Discharge Elimination System (NPDES) permit under §402 of the CWA. And for years Oregon miners accepted this requirement unquestioned as at first most miners could operate under the permit, it was easy to obtain, covered the whole state, and for dredges 4" and smaller the permit was free. However, over the years as more and more people with a green agenda were employed by the agencies, by 2005 the once simple permit became, without a shred of proven harm, ridiculously restrictive, prohibitive, and sight specific. This forced us to look into the permit and the laws… and we soon discovered (so we believe) that the §402 NPDES permit was the wrong permit in the first place… that if under the CWA at all it would be under §404 and the U.S. Army Corps… and then we promptly filed a Challenge to the 2005 issued DEQ 700PM permit.

Since then, we received a bad Decision by the Oregon Court of Appeals and were declared moot before we could be heard by the Oregon Supreme Court (because the 2005 permit had expired) forcing us to start over in 2010 in an even lower court and slowly climb back to the Court of Appeals (who refused to change their earlier bad decision), and then appeal to the Oregon Supreme Court… and then the same thing happened, the 2010 permit expired and we were declared moot a 2nd time! Luckily, we convinced the OR Supreme Court that it was impossible for us to ever be heard as DEQ could revoke the permit at any time… so they agreed we were not moot; and we finally had a hearing in May, 2018…. we are still waiting for a Decision.

THE BAD DECISION: In Dec. 2009, the Oregon Court of Appeals ruled that the discharge from a suction dredge required BOTH CWA permits (402 & 404)… even though the CWA itself specifically states for a single discharge you need one or the other, never both.

Under the CWA, a permit is required for any discharge into waters of the United States. For most discharges, a NPDES permit under §402 (EPA) is required for the discharge A) of a pollutant, B) from a point source (pipe, ditch, hose, trough, etc.), C) into waters of the U.S. – UNLESS it was a discharge of "dredged or fill material" pursuant to §404 of the CWA and under Army Corps permitting.

"Discharge of a pollutant" has been defined by the courts as the "addition" of a pollutant *from the outside world…* such as taking material from shore and dumping it in the water. There is no "addition" when suction dredging… nothing is "added". We do not understand why this is so difficult to understand… and to make matters even worse, there is talk that any new permit in CA (if ever) will be a NPDES permit – making our case even more important. We strongly believe that the discharge from a suction dredge consists of "dredged and fill material", and such should be under §404 and the Army Corps.

In requiring BOTH CWA permits, the Appeals Court ruled that the discharge from a suction dredge consisted of: A) rocks, gravel & sand that settled quickly and should be under §404; and "turbid wastewater" under §402 NPDES. As far as we know (and we've looked), no other dredging activity (like for harbors, or channel maintenance so barges can pass, etc.) is required to have a NPDES permit. Lucky us?

Interestingly, even though the OR Appeals Court was aware of, and even cited the U.S. Supreme Court decision of June 22, 2009 in COEUR ALASKA, INC. *v.* SOUTHEAST ALASKA CONSERVATION COUNCIL et al.; the Oregon court totally missed the whole point of the Supreme Court decision in their Dec. 2009 Decision! (As explained below):

402 vs 404, that's the question.

Before we can understand the Couer Alaska decision, it is helpful to understand what Couer Alaska was actually doing (or attempting to do). According to the decision: In reviving a closed Alaska gold mine using a "froth flotation" technique, petitioner Coeur Alaska, Inc., plans to dispose of the resulting waste material, a rock and water mixture called "slurry," by pumping it into a nearby lake and then discharging purified lake water into a downstream creek.

NOTE: This was a lode "hardrock" mining operation involving excavation of solid rock (probably involving blasting) using froth floatation for the recovery of gold. With froth floatation, excavated ore is crushed to super fine particles typically smaller than 0.1mm. When crushing & grinding rock to a max. size of 0.1mm (or smaller) a percentage of the ore will be crushed down to the

microscopic level. The crushed ore is then fed into the floatation plant.

Couer Alaska planned to obtain a 404 permit for the discharge of the slurry into a lake. The Couer Alaska case was brought by environmentalists (SEACC), who argued that Couer Alaska needed a 402 permit for the discharge of the slurry into the lake:

Respondent environmental groups (collectively, SEACC) sued the Corps and several of its officials under the Administrative Procedure Act, arguing that the CWA §404 permit was not "in accordance with law," 5 U. S. C. §706(2)(A), because (1) Coeur Alaska should have sought a CWA §402 permit from the EPA instead…

In the Coeur decision, the "slurry" has been defined as (emphasis added):

…waste material, **a rock and water mixture** called "slurry,… (which was described as consisting of 30% solids, 70% water).

Keeping in mind that the court found that 404 was the proper (and sole) controlling authority for the discharge of the slurry, let's compare the slurry to the discharge from a suction dredge (or sluice box). In the "froth floatation" method, solid chunks of mined rock are usually crushed down to (minimally) fine sand. During the crushing process, even if the net result is no particles larger than 18 mesh (the size openings in a standard kitchen strainer), there will be a fairly large percentage of particles that are considerably smaller than 18 mesh… all the way down to the microscopic level (turbidity causing).

In other words, the "slurry" consisted of 30% particles of crushed rock from sand down to microscopic, and 70% water. Compare that to the discharge from a suction dredge: A four-inch suction dredge will typically discharge rocks from minus 4 inch diameter down to gravel, sand, and silt; and water. Nothing is crushed. And although I have no figures, I highly doubt that the slurry discharged by a suction dredge ever exceeds 10% solids.

The key to the Couer Alaska decision appears to be *"the discharge of fill material"*:

> The Clean Water Act (CWA), *inter alia*, classifies crushed rock as a "pollutant," §352(6); forbids its discharge "**[e]xcept as in compliance" with the Act, §301(a); empowers the Army Corps of Engineers (Corps) to "issue permits … for the discharge of … fill material," §404(a)**; and authorizes the Environmental Protection Agency (EPA) to "issue a permit for the discharge of any pollutant," **"[e]xcept as provided in [§404],"** §402(a). ***The Corps and the EPA together define "fill material" as any "material [that] has the effect of … [c]hanging the bottom elevation" of water, including "slurry … or similar mining-related materials."*** 40 CFR §232.2.

So, according to the Couer court, a slurry consisting of 30% crushed (pulverized) rock and 70% water meets the definition for "fill material", as it has the effect of changing the bottom elevation; regardless of the fact that much of the solids discharged in the slurry would stay suspended for a considerable amount of time (in fact, turbidity was not mentioned in the Couer decision, at all (that I know of). According to the decision, it did not matter that the discharge was clearly an "addition of a pollutant from a point source"… that it would act as "fill" (by changing the bottom elevation of the lake) seemed to trump all §402 permitting.

And of course, the discharge from a suction dredge or from an in-stream sluice box would, by its very nature, tend to "change the bottom elevation" even more so than the Couer slurry.

CONCLUSIONS: I find it utterly impossible to fathom the thinking of the person/s that believe the discharge from a suction dredge would require a 402 NPDES permit. The Couer court clearly found that if the activity involves the discharge of fill material, then the activity was under the jurisdiction of the Army Corp and 404; and if 404 applied (i.e., need a 404 permit or are exempt), a 402 was not required (and against the law and regulations).

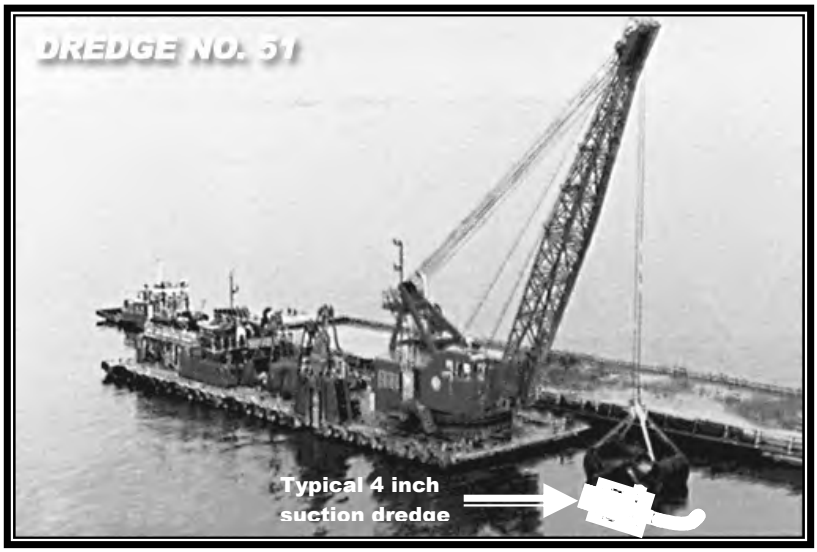
Considering the make-up of the Couer slurry, I would think that the turbidity from the Couer discharge would tend to far exceed any possible level of turbidity caused by a suction dredge.

I find it equally interesting to see what is not in the Couer decision: No mention of the "addition" element, or turbidity.

To sum it up, the Couer court ruled that the (Couer Alaska) discharge (addition of) of "process wastewater", including solid (beneficiated) wastes and pollutants; from a (probable) point source; into waters was under the authority of the Army Corps and 404 simply because the discharge (regardless of what it was or where it came from), was "fill material" (i.e.; would "change the bottom elevation" . . . and because such discharge was under Sec. 404, Sec. 402 did not apply, at all, ever.

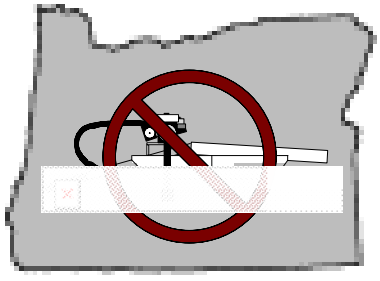
Even before the 2009 Decision by the U.S. Supreme Court it seemed to us that the CWA is fairly clear that NPDES does not apply to the discharge from any kind of dredge, including a small suction dredge. It is utterly amazing that this issue has been in court now for more than 12 years… WHY?

Now more than ever we need to get out from under NPDES, as the DEQ permit has since grown so restrictive that nearly no one can work under it. Heck, you can't even move a rock bigger than 1 ft. unless you can move it "by hands of one (1) person"! (i.e.; Miners can't move rocks)



LEFT shows Dredge No. 51, which operates under §404 and the U.S. Army Corps… Next to the clam-shell bucket is the approximate size of a typical 4" suction dredge… which according to Oregon is the scourge of the Nation and must be banished!

One scoop from No. 51 is more than the 4" dredge can move in a day… and yet the 4" dredge needs both CWA permits… go figure!



MINER'S ALERT: LETTER WRITING CAMPAIGN
WE NEED YOUR HELP – ***NOW***!

NOW IS THE TIME YOU CAN HELP other than sending $$ support! **YOU CAN MAKE A DIFFERENCE! WE NEED** as many people as possible **AS SOON AS POSSIBLE** (immediately – like right now!) to send letters to the below listed Federal Officials. Our goal is to urge Noel J. Francisco, the Solicitor General, to file an "amicus curiae brief" in the U.S. Supreme Court recommending they take our case (BOHMKER).

A couple years ago when the Rinehart case was appealed to SCOTUS (Supreme Court Of The United States), the Solicitor recommended the court not to hear the case… and thus Rinehart was not heard, Rinehart and all miners lost and here we are today over the same basic issue – except expanded to multi-states, and is a permanent PROHIBITION.

WE NEED the Solicitor General to recommend to SCOTUS that our case be heard.

Noel J. Francisco, the Solicitor General, in his recommendation to SCOTUS to not hear Rinehart mentioned that there was a better, more clear case on-going in Oregon that the court might wait for… which is the Bohmker case. Ask him to honor his earlier recommendation by supporting SCOTUS review of the U.S. 9th Circuit's Decision in Bohmker.

President Trump can request this… so write him asking him to direct the Solicitor to recommend SCOTUS review.

Jeffrey Bossert Clark, Assistant Attorney General was appointed by President Trump and appears to have the most influence in the Justice Dept. upon Mr. Francisco… so write him too.

This is YOUR CHANCE to get involved, help & do something! PLEASE drop what you are doing and write some letters!

WRITING POINTS: Your letter does not have to be lengthy… one page is plenty. A simple statement that your rights (along with other millions) are being violated by a terrible decision by the U.S. 9th Circuit over-turning 146 years of mining law and court decisions… and that all you ask for is a fair hearing in the one court that can overturn the 9th Circuit's Decision. (Several *Sample Letters* are available on the WMD website).

Please refer to: *Bohmker v. Oregon,* 903 F.3d 1029 (9th Cir. 2018), *pet. for cert. pending.*

President Donald J. Trump
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20006

Noel J. Francisco
Solicitor General
Office of the Solicitor General
950 Pennsylvania Ave., NW
Washington, D.C. 20006

Jeffrey Bossert Clark Assistant Attorney General ENRD
U.S. Department of Justice
Environment and Natural Resources Div. Room 2121
601 D. Street
Washington, D.C. 20578

IN YOUR LETTERS PLEASE SAY THAT YOU WANT THE UNITED STATES, THROUGH THE OFFICE OF THE SOLICITOR GENERAL, TO FILE AN AMICUS CURIAE BRIEF RECOMMENDING THAT THE UNITED STATES SUPREME COURT HEAR OUR CASE: ***Bohmker v. Oregon,* 903 F.3d 1029 (9th Cir. 2018), *pet. for cert. pending.***

IN ADDITION, YOU SHOULD ALSO WRITE THE BELOW OFFICIALS, who are with the Dept. of Agriculture (Forest Service) or with the Dept. of Interior (BLM); the two federal land management agencies we commonly deal with. In the "Mining and Minerals Policy Act of 1970", Congress renewed their intent that mineral development was to be "fostered and encouraged" by the regulatory agencies. It makes no sense that the state(s) can prohibit mining on federal lands when the federal management agencies cannot!

The 9th Circuit's Decision places everything the BLM or Forest Service does under the direct control of the states who now have the Final Say and can prohibit any activity, for any reason… including none at all in the Name of Protecting the Environment, or Fish, or a Worm, Slug, etc.. If the states can ban all motorized mining which is protected by Congressionally Granted Rights, they can just as easy ban use of chainsaws and limit loggers to axes and bow-saws on a mere politically driven whim.

James E. Hubbard, Undersecretary, Natural Resources & Environment, U.S. Department of Agriculture, 1400 Independent Avenue, SW, Washington, D.C. 20250

Vicki Christiansen, Chief, United States Forest Service, 1400 Independence Ave., SW, Washington, D.C. 20250

Joe Balash, Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior, 1849 C Street NW, Washington, D.C. 20240

Jim Carson, Associate Deputy Secretary, U.S. Department of the Interior, 1849 C Street NW, Washington, D.C. 20240

Dan Jorjani, Principal Deputy Solicitor, U.S. Department of the Interior, 1849 C Street NW, Washington, D.C. 20240

Please refer to: *Bohmker v. Oregon,* 903 F.3d 1029 (9th Cir. 2018), *pet. for cert. pending.*

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20006

February X, 2019

RE: STATES PROHIBITING GOLD MINING?

Dear President Trump;

I am writing you today to ask you to please direct those in your administration to advise the U.S. Supreme Court to accept and hear *Bohmker v. Oregon*, 903 F.3d 1029 (9th Cir. 2018), *pet. for cert. pending.*

At the least, please direct the Solicitor General, Noel Francisco, to look into this travesty of justice and to file an amicus curiae brief recommending that the United States Supreme Court take this case. The issue in question is paramount as it affects hundreds of 1,000's jobs if not millions, and destroys the rights of hundreds of 1,000's of individual citizen miners, prospectors, and claim owners . . . solely for political purposes under the guise of theoretical environmental protection.

Oregon and California have banned the use of *all* motorized underwater mining equipment; regardless of the effects or scale (spoon-fed battery-powered concentrators are also banned, along with 12v bilge pumps like found in boats and lawn-mower engine driven pumps). Without motorized equipment, many underwater gold deposits are beyond reach – they might as well be on Mars. They and the courts claim this is not a ban on mining… ***as miners are still free to pan for gold by hand.*** (Ever try shoveling in 4 feet of water? Now try 10-20 feet.)

All I ask for is fair justice – to be heard. The 9th Circuit has made a huge mistake overturning 146 years of Mining Law granting states the authority to decide uses of the Public Lands ignoring the authority of the United States. Only the U.S. Supreme Court can overturn this bad decision.

I thank you for your attention to this very important issue and pray we can all help make America Great Again - and Forever, but that will only happen if we are a Nation of Laws… and not twisted personal agendas.

Sincerely;

EXCERPTS FROM THE

Petition for Writ of Certiorari

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Questions Presented for Review

In *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987), this Court considered the question whether states might assert permitting authority over the development of minerals on federal mining claims on federal land. Based upon California's assurance that it did not seek to ban the mining, this Court held that "reasonable state environmental regulation" was not preempted, though state land use regulation would be. *Id.* at 588-89. Multiple states now assert the right to ban mining as a use of specified federal lands categorically, rather than provide a permit-based process for imposing reasonable environmental standards on federal mining operations.

The Ninth Circuit, in sharp conflict with *Granite Rock* and multiple federal circuit and state supreme courts, has upheld an Oregon statute prohibiting any and all motorized mining on federal land in areas Oregon deems better suited for use as fish habitat, effectively banning the development of minerals on such federal mining claims. This raises the questions:

1. Whether a state statute prohibiting any and all motorized mining in state-designated zones on federal land is categorically preempted under the Supremacy Clause because Congress has occupied the field of land use control on federal land through the Federal Land Policy and Management Act (FLPMA), 90 Stat. 2743 (1976), the National Forest Management Act (NFMA), 90 Stat. 2949 (1976), and related statutes.

2. Whether state statutes prohibiting any and all motorized mining on federal mining claims are preempted as an obstacle to the accomplishment of the full purposes and objectives of Congress set forth in multiple mining and land management statutes. (GO TO WMD WEBSITE TO READ ALL)

MORE YOU CAN DO TO HELP….

PRIZE DONATIONS NEEDED!

Unfortunately, the only method we've found that comes close to raising the necessary funds to stay in the fight is by holding a raffle type Drawing. It is a shame that the mining community requires a chance to win a prize before they will donate; but that's the way it generally is. We are currently gearing up to launch another Drawing (actually, we are already one month behind)… but we lack Prizes!

SO, we are calling on those in the Mining Community, *especially the many mining organizations out there* to donate some type of worthy prize to the cause. It can be as simple as a Walmart Gift Card to Silver Coins, Gold, an unneeded mining claim, or just about anything else that others would like to win.

This Drawing is held by the Western Culture Conservancy, a 501(c)3 non-profit org.. If you desire, your Prize Donation can be tax-deductable and your name will be added to the List of Prize Donators.

PLEASE try to come up with a Prize that; 1) Is desirable, or collectable, and the more people it appeals to, the better; 2) Is easily shippable via US Mail, FedEX or UPS… unless of course you have something larger but worth the effort… such as a mint condition 1969 XKE Jaguar. We can even work out the donation of Firearms if you happen to have extras (contact us first).

If you or your group has something they would like to Donate, please contact WMD at P.O. Box 1574, Cave Junction, OR 97523, or email info to: waldominingdistrict@gmail.com

. . . and check the WMD Website for News on the Drawing and How to Enter starting hopefully by mid-February.

www.waldominingdistrict.org

LAST WARNING: ARE YOUR DUES DUE?

As mentioned on Page 2, many members have gotten 2 or more years behind in their dues. In the Sept. News we gave Warning to all those behind in their dues that they would be given one more Warning… and THIS IS THAT WARNING.

PLEASE LOOK at the Address label on the envelope this News came in. To the right of your name is a date, such as "01/18". This means your dues were due Jan. 2018… and you now owe two years dues to be paid up.

LAST WARNING: We don't want to lose you, but if your due date is older than 2018, and you have not submitted your dues by the time the 2019 Spring News comes out, we will have to cancel your membership without any further warning.

END OF THE YEAR REPORT

2018 was a busy year with one thing happening after another, and this looks to continue for the foreseeable future. We had the hearing in the Oregon Supreme Court in the EOMA/WMD v. DEQ case in March, and in May we had our hearing in the U.S. 9th Circuit followed by a nice break from lawsuits through the summer up until the 9th Circuit released their Decision on Sept. 12… when it all started up again with filing a petition for "en banc" review which was then denied Opening the door to the U.S. Supreme Court and that whole process leading up to our Petition filed Jan. 21, 2019.

In the next few weeks we will be working with a Legal Foundation that has offered to submit an amicus brief on behalf of WMD, and a few other mining orgs pro-bono. Then, this coming spring we will be busy hopefully getting the Fund-Raising Drawing going, and possibly responding to briefs filed by and support of the state and environmental intervenors. Hopefully by summer all of the briefing will be completed… and then we wait to hear if we will be one of the very few cases the Supreme Court agrees to hear (according to the Supreme Court website, they get 6-7000 cases presented each year, and hear about 80… not good odds by far but we have hope due to the 9th Circuit's Decision being so far afield of logic, common sense, past court decisions, and rhe LAW!

WINTER IN WALDOLAND: It is near the end of January as this News goes to print, and so far winter has been "not much" with virtually no snow below 1,800 ft. or so, and the one heavy rain spell a week or so ago has melted a lot of the upper snow and the creeks have already fallen… could be another dry fire-prone summer.

PLEASE SUPPORT OUR EFFORTS TO SAVE SMALL-SCALE INSTREAM PLACER MINING IN OREGON – AND BEYOND. Information on How to Make a Donation is on our website at: www.waldominingdistrict.org along with copies of all the court briefs & decisions, and more.

ANYONE wishing to make a Donation to our SB 3/ DEQ Legal Fund (or General Fund) can send it directly **to the WMD at our P.O. Box**… or left for us at **the Armadillo Mining Shop** in Grants Pass.

We have also set up a PayPal account on our WMD website where you can make online Donations.

DRAWING COMING SOON: We will be launching a new Fund Raising Drawing this spring, with the possibility of several mining claims as prizes! ALL that have donated since last March will be entered in the Drawing! We are currently soliciting and arranging prizes, and should have the Drawing up and running by the time the next WMD News comes out. Donations of prizes are needed and more than welcome! (Contact us at the WMD P.O. Box).

FOLKS: All this litigation costs $1000's of dollars. Our case is currently the only real hope to save mining.

WALDO MINING DISTRICT - 2019 MEMBERSHIP, RENEWAL & DONATION FORM

DUES DUE DATE IS PRINTED NEXT TO YOUR NAME ON THE MAILING ENVELOPE, AND SHOWS THE MO/YR YOUR DUES ARE DUE NEXT.
The WMD shares Member Contact information with NO ONE.

PLEASE CHECK

☐ **NEW MEMBERSHIP** ☐ **RENEWAL** ☐ **DONATION**

☐ **INDIVIDUAL … $15.00** ☐ **FAMILY … $17.50**

AMOUNT … $ _____

_____ _____ _____
name (print) date phone

_____ _____ _____ _____
address city state zip

_____ ☐ **Please check for Email Newsletter only.**
EMAIL (***PLEASE*** **PRINT CLEARLY !**)

TOTAL AMOUNT ENCLOSED: $ _____

PLEASE SEND YOUR DUES AND/OR GENEROUS DONATIONS TO:

WALDO MINING DISTRICT P.O. BOX 1574, CAVE JUNCTION, OR 97523

FOR ADDITIONAL INFORMATION, WRITE THE WMD AT THE ABOVE ADDRESS, OR EMAIL US AT: waldominingdistrict@gmail.com
OR VISIT US ON THE WEB AT www.waldominingdistrict.org

"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it's the only thing that ever has!" Margaret Mead