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The Independent Rural Producer

By Arthur Sappington

Introduction

As a watershed manager, I realized after the spotted owl closure of Oregon's timber industry, that natural resource managers and watershed managers must address social and political perceived issues. Thus, in 1990 I took on a project called Fox Creek Land Trust. The previous owner of Fox Creek had the science all mapped out--water, wildlife, timber, agriculture, and forage—but neither he nor I understood, at that time, the urban versus rural conflict tearing Oregon apart. From 1990 to 2008 I wrote notes and several articles on how Fox Creek (830 acres) provided socially beneficial products and services, such as water, forage, fish, wildlife, timber, agriculture, CO2 sequestration and amenities like recreation and camping.

In this essay I update my Fox Creek Land Trust notes using mining as a how-to example to explain the social benefits of production. Mining law is easier to follow than farming, timber, or water law. Mining law was the basis for all the articles I wrote before I read Thomas Sowell's articles and books and went to speak at Princeton on behalf of farmers and ranchers.

My writings on the Fox Creek alternative watershed model resulted in me testifying during the Clinton administration before a US House hearing on the Columbia River basin watershed plan (Washington, Oregon and Idaho). My discussions with environmentalists precipitated the writing by academic elites of a book about the rural-urban divide: Toward One Oregon, Rural-Urban Interdependence and the Evolution of a State, published in 2011.

The Independent Rural Producer

There is a real travesty occurring in this country against the rural independent natural resource producer on lands both public and privately owned within the watersheds.

Who is a natural resource producer?

Any mineral grantee whether patented or as patent, under the 1872 mining law, any miner or mineral developer who works with federally owned leasable or saleable minerals, any timber operator or worker within the National Forest, Bureau of Land Management, or private timber or range lands, and agricultural or livestock producers: those whose production of wealth from the ground provides the very foundation of society.

It has been documented that government agency personnel (prosecutors and others) from both federal and state governments have willfully and politically obfuscated documents and oral information about rural production and have vilified rural producers. I understand that the urban consumer has been led by the media and the government to believe that the environment must be saved from producers (timber operators, ranchers, farmers, manufacturers and miners).

Urban people are generally unaware that obfuscation and suppression of factual information by prosecutors, bar members and federal agents are violations of United States Code, Title 18, sections 241 and 242, often referred to as "color of law," violations readily documented and well supported by federal and state constitutions, statutes and case law—and that these violations are not being prosecuted.

I originally collected these notes to address issues of fire ecology and watershed management, first on behalf of locatable mineral producers who had been hauled into the civil and criminal court system contrary to applicable mining law and in total violation of due process, and second on behalf of all natural resource producers. Our founding fathers saw the need to protect the individual freedom and liberty of wealth producers from despotic government agents acting as did King George. To protect the independent rural resource producer, the American constitutional republican form of governance established law that separates production from commerce by specific regulatory authority.

The federal government has jurisdiction only over interstate commerce. The distinction between ordinary operations of production and commerce was clarified in **The Government of the United States National, State, and Local, by** William Bennett Munro. Munro stated that commerce was clarified by the US Supreme Court as *"Location on land, by water, or through the air, the movement of persons, merchandise, and messages—in fact it covers pretty much the entire field of economic intercourse."* But the Supreme Court expressly excluded production from the term commerce: "*So not everything that looks like commerce turns out to be so. In general, however, the term excludes the ordinary operations of agriculture, mining, forestry, or manufacturing."*

***The Government of the United States National, State, and Local, by** William Bennett Munro. Professor of History and Government at the California Institute of Technology 4th edition, *New York,* MacMillan, 1937, Regulation of Commerce, p. 411.

Mining was not always held in ill repute as it is today. In 1903, the Rev. Robert McIntyre wrote: "The miner who digs a fortune out of the ground has the satisfaction of knowing that he has not robbed a soul, even though he becomes a thousand times a millionaire. Then, too, there is another factor to take into consideration. The man who makes a fortune on the board of trade or the stock exchange, or in building up a gigantic business house, adds nothing to the store of the world's available wealth. The world, in other words, is no richer because he is richer. He is richer rather because someone is poorer. The miner, on the other hand, whether he digs $10 or $100,000 worth of minerals adds that much to the world's wealth, and with that added wealth he contributes just that much to the possible amount of the world's comforts and pleasures.

"As I look at the matter there are few producers of wealth. The many live on the few. The only man comparable with the miner is the farmer. He gets what he has direct from nature, but he produces perishable wealth. While he meets a want, his contribution to the world's wealth, therefore, is not permanent, like the miner's. The gold miner is today the king of wealth producers of the country, and I honor him above all others."

The organic history of this country demonstrates that all property/wealth, new and old, can only come from the earth or ground, that there is no other source. Wealth is created, that is, produced, when a farmer

with his labor plants or tends to livestock and harvests and hauls his product to market; or when a logger cuts timber or trees and hauls them to the mill; or when the oilman or miner recovers minerals from the ground and hauls them to refineries. All are classified in historical law as "*Means of Production.*"

The founding fathers intended in their wisdom to fashion a way to deter federal and state governments from acting as did King George against the self-governance of this specialized and vastly important class of citizens, independent producers, who, **being a political minority, are to be protected from the majority**. Though rural independent producers are decreasing in number and their voice of political self-governance has thereby weakened, their protection is accomplished through the adherence to American land disposal law to private producers and private property owners and upheld by the courts. The title, possession, and use of these granted lands and means of production is held exclusively and against everyone, including the United States. A unique feature of this protection is that it is to last forever, as stated in all land patents. (This need was foreseen against any social majority governance, i.e., democracy, trying to replace the republican form of governance.)

If America is to survive our current economic and social crisis there must be a change of understanding and action in both urban and rural communities, a paradigm shift, both economic and social, to the end that society and government agents would recognize and encourage the inalienable right of the nation's independent rural producers to work within the watersheds to produce the necessities of life for urban and rural communities alike, as our forefathers envisioned, and as Congress has clarified in statute, to maintain a high standard of living commensurate with America's rich natural resources.

Due to Hollywood movies, and due to deliberate negative stereotyping of rural producers and rural communities, there has developed a dangerous misperception of the natural protective reflex of the rural people in responding to unjust community-wide losses of personal freedom of action, private property, personal rights, and livelihood. Farms, ranches, and rural economies are under siege, and urban people have been taught not to care that life's necessities must now be imported.

Private property rights are recognized and protected by both federal and state courts and constitutions. Similarly, the US Constitution places all states on an equal basis, regardless of land size or population, for protection of minority or small state interests by **the structure and power of the United States Senate, which empowers individual senators and thereby protects relatively small** minorities: the power of committee chairs, the unanimous consent rules for many steps in the legislative process, and the need for sixty votes to end debate, for example. Thus far the Senate has prevented an unlawful theft of resources by enabling resource-rich states to block thieving efforts by resource-poor states to change the General Mining Law of 1872.

The General Mining Law, Act of May 10, 1872, is a settled pre-emptive congressional soil disposal law grant containing express and implied contractual obligations, such as "*exclusive possession and enjoyment*" of the land, 30 USC 26, self-determinant livelihood, fiduciary relationships, equitable title held in trust for the entryman, beneficial title securing the soil by the Location Notice of record and by *pedis possessio (possession demonstrated by the feet of the owner walking on and using his land)*. All mining claims "*are real estate," the producer* having "*a legal estate therein."*

Oregon law, ORS 517.080, supports federal mining law, providing a court may only affirm but may not question or interfere with these land/soil disposal acts.

Mining law stands as an inconvenient truth to those who would take land and property from producers. This paper attempts to clarify, as well as rectify, the concerns of the misperception (political obfuscations)

of the proper interpretation of mining law. As quoted by several supposed mining lawyers/attorneys: there is "*an almost impenetrable maze of arguably relevant legislation in no less than a half-dozen statutes, augmented by the regulations of several Departments of the Executive". "... [t]here is little cause for wonder that the language of these statutes and regulations has generated considerable confusion*"). California Coastal Commission v. Granite Rock Co., 480 U.S. 572, 606 (1987)

As I documented road closures and prosecutions against miners, it became apparent that the Oregon Department of Justice and the Oregon offices of federal agencies were and are abusing the legal system. Otherwise, the Portland U.S. Prosecutor would not have been or even be able to lawfully file civil charges let alone file criminal charges against rural property owners; unless there was and is a deliberate, with malice, ignoring of congressional saving clauses in law; and instead promoting a socially driven agenda against private property.

As stated by Judge Andrew P. Napolitano, "The government agencies break the law **[United States Code]** to enforce the law **[Code of Federal Regulations]**."

To paraphrase Judge Napolitano: When the government or its agencies commits a crime and the offending government actors are not prosecuted; it becomes a *precedent;* no slate is wiped clean. Worse, the precedent becomes a basis for the same government agencies and other governments to do likewise in the future. The precedent breeds disrespect and frustration. The precedent tramples human liberties, and it makes those who run the government agencies, however brief their tenure, close to tyrants. The precedent is contagious because unpunished crime is contagious; it breeds contempt for law and invites some to become a law unto themselves. If the Constitution and laws of Congress are enforced selectively, according to the contemporary wants and needs of the government [personnel], we will continue to see the government lying to its citizens, stealing their property, tricking them into criminal acts, making a mockery of legal reasoning, and breaking laws in order to enforce them.

Judge Napolitano wrote: "to paraphrase Professor Laurence Tribe of Harvard Law School, *the whole reason we have an independent life-tenured federal judiciary is to put the brakes on democracy, to prevent the tyranny of the majority. Without a judiciary checking the behavior of congress and the president* [this would include agency personnel]--*making certain they conform to the constitution--nothing could prevent the majority from taking property or freedom from those it despised."* Stated in **Constitutional Chaos** by Andrew P. Napolitano, page 188.

To return to the miner/producer, the Rev. McIntyre's thought, quoted above, is worth reading again: "The miner who digs a fortune out of the ground has the satisfaction of knowing that he has not robbed a soul, even though he becomes a thousand times a millionaire. Then, too, there is another factor to take into consideration. The man who makes a fortune on the board of trade or the stock exchange, or in building up a gigantic business house, adds nothing to the store of the world's available wealth. The world, in other words, is no richer because he is richer. He is richer rather because someone is poorer. The miner, on the other hand, whether he digs $10 or $100,000 worth of minerals adds that much to the world's wealth, and with that added wealth he contributes just that much to the possible amount of the world's comforts and pleasures.

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The Economics of Production

My mentor, mining engineer Ken Anderson, teaches: “Civilization has been accurately defined in the following words: "It is the final test of a progressive civilization that a given effort shall produce a larger modicum of average individual comfort, and the pursuit of this ideal has been from first to last the impelling force which drives civilization onward." This "individual comfort," to the mind of the average person of the present day, increases when he surrounds himself with labor-saving inventions such as motor cars/autos & trucks, railways, tools and machines, steel-frame buildings, radios, computers, cellphones, microwaves, and a thousand other objects largely composed of metal and requiring the use of metals at many stages in their production. In other words, taking the materialistic view which is almost universal in the world today, one measure of civilization is the amount of metal consumed.

I am sure you are aware of the slogan “Save the Earth”; but few ever think of the statement, No life can exist without the harvest or productive use of the earth’s resources. Our present civilization is based upon an increasing demand for, and utilization of, mineral deposits. The structure of this civilization is like that of the steel skyscraper; its pace is that of the machine of metal, fed by mineral fuel. Every thought or act of our daily lives would be changed if someone, at some previous time, had not somewhere dug something out of the ground. Mining is, with agriculture and timber, one of the three basic industries upon which rests our modern life.

The maintenance of this civilization obviously depends upon a vast supply of useful metals. Those peoples utilizing minerals to the highest degree are those that have built the great industrial nations today directing the destiny of the world. The search for an ideal average comfort and a maximal efficiency is, it may be said, an economic problem; for economy seeks the highest possible ratio of utility to cost.

There is a human need for metals, and this need is supplied by mining and mineral development. More and more the progress of human affairs has demanded that economical methods be applied to this quest for and this production of metals, for these reasons:

1. Our civilization has required an increasing annual supply of minerals, new or recycled.
2. The world supply of unused minerals is decreasing and at the present rate of consumption approaches exhaustion sooner or later.
3. A farseeing economic control (capitalism) must be practiced if the present mineral civilization is to endure.

Our civilization requires a tremendous supply of minerals to sustain its economic existence. The administrative ideal that management in the mining industry seeks to attain is the satisfaction of this demand in the most economical manner.

The test of management is therefore the amount of *profit* that is earned in the enterprise. **It should be understood that profit here is used in the sense of accumulated benefit or value.** *It is conventional to express this profit or gain in monetary terms*, but profit should be considered as something more than merely interest or dividends on capital. ***Profit may occur in the form of amenities or imponderables*** *such as an increase in amount of goods, a wider variety of services, a saving in expenditure, a lightening of the burden of human toil, an accession of greater welfare and happiness to a greater number of beings*.

These **amenities or imponderables** are often translated into arbitrary monetary terms for the purpose of estimating the economic value or ranking of a project (such as expenditure for public works like bridges or highways, which are paid for by timber receipts/taxes and should return a profit through saving or

increased usefulness to the population as a whole); but the dollar is merely a convenient, if imperfect, measure of profit in this broader sense.

Even the most rabid communist/socialist does not wish to abolish profit/wealth as such; they may hope for a different distribution than that prevailing under the American capitalistic system, but if money/capitalism were abolished overnight some other way to measure profit/wealth would inevitably be needed to fill its place.

It is my understanding based on congressional statutes that the "must and shall" course of action in law for our nation is to ensure continuance of wealth producing operations in our rural counties/states and mining districts. The marginal, possible, and prospective resources of these districts far transcend in importance at the moment the so-called "vast unscratched resources" awaiting discovery. We should not sacrifice our best prospects on the social theory of finding resources which may not exist. Over 140 years of prospecting has taught us just that.

At the same time everything possible should be done to aid and encourage the prospector and the small miner, because it is to them we must look for the continuing development of discoveries from which reserves are ultimately developed. Let no user of copper, lead, zinc, gold, or silver, or other minerals or rock, whether he is manufacturer, or ultimate consumer, be lulled into a state of complacency by those who advise that if and when our copper, lead, zinc, gold, and silver or other mineral reserves are exhausted or politically prohibited from extracting, we will import our needs from foreign countries.

From what foreign country and at what price?

Most countries have been prospected except in remote or inaccessible regions. No one at this moment has a good reason to expect that new important deposits in foreign lands will be found more easily than in our own. But if the build-up of foreign reserves and the closing of American mining continues, the time may come in the not-too-distant future when our national status will be that of a truly "have not" nation, and import prices may be such as to make our present-day metal prices seem ridiculously low.

This nation must revive its shrinking mining, timber and agriculture industries and not only retain but enhance its productivity as long as possible; and maintain it at high standards of efficiency, which means the preservation and increase of our technical skill. We must protect also the interest and enthusiasm of the individual producer of minerals, food and timber, built up since the day of gold discovery in California, and not allow it to die with this generation or the next. If we fail, those who will suffer most eventually are the great manufacturing industries and along with them the everyday American citizen known as the "ultimate consumer," who finds one or more of these products in nearly every article of commerce designed to raise their standard of living.

It is obvious that in a single paper no great attention can be given to the tremendous body of law that may affect production. All that can here be attempted is to recall a few general observations on the subject of production with focus on the locatable mineral producer, AND to list the branches of law that will be of acute interest to the natural resource producer, as well to refer him to a competent constitutional legal adviser and to the Jefferson Mining District, JMD, www.Jeffersonminingdistrict.com. One who wishes to pursue his study beyond a mere outline should start with **Mines and Mineral Land**, by Lindley, third edition.

However, our forefathers in their foresightedness to prevent federal and state government from acting as did King George, for the protection of individual freedom and liberty, separated production from commerce for specific regulatory authority/jurisdiction into clear categories. They recognized that all

property/wealth, new and old, can only come from the earth/ground, that there is no other source of production. Wealth is created, that is, produced, when a farmer plants crops or tends to livestock, harvests with his labor, and hauls it to market; or when a logger cuts timber/trees and hauls them to the mill; or when the oilman or miner recovers minerals from the ground and hauls them to refineries. All are classified in historical law as means of production. This wealth is physically expanded, and enters commerce, only when raw products coming from the land are processed and/or manufactured into useful products for public consumption or end use.

Separation of Powers Protects Production

It was a universal popular conviction in the United States that power should not only be divided between the nation and the states but also within each government by separating the exercise of power into executive, legislative and judicial. One branch should serve as a check upon the other. It is in accordance with this principle of counterpoise that the American national and state governments are organized. The executive, legislative, and judicial branches are kept separate and independent of each other. The President's veto serves as a check on Congress; the Senate's authority to confirm appointments and to ratify treaties is intended to serve as a check on the President; the Supreme Court's right to declare laws unconstitutional operates as a check on both elective branches of government.

The entire structure of American government, in fact, is based upon the premise that it is the inevitable tendency of governments to become oppressive and that individual officeholders and groups of officers will abuse their powers if given the opportunity. They will go forward in this direction until they are checked. Hence power shall be an automatic counterpoise to power. Sometimes, perhaps, checks and balances are too effective, and delay the operations of government; but it is a measure of safety, and most Americans believed it a wise principle.

Nevertheless, there are signs that the urban public no longer understands the principle of checks and balances. The past few years have seen legislative powers of vast and far-reaching consequence handed over by Congress to the President, with no judicial check, and with no nation-wide chorus of popular protest as would have occurred a generation ago. The authority of the governors has similarly grown at the expense of the state legislatures and judiciary.

In a word, the old balance is being rudely disturbed. The checks are being weakened. This is because the urban population seems to have lost, in large measure, their old-time fear of executive dictatorship. The American republic is still today the only great government which retains the principle of checks and balances. If the steady expansion of executive authority continues, America will not retain that distinction very long.

The concept of local self-determination gained its first general acceptance in England and was brought to America in colonial days. There it quickly gained a foothold in the Virginia county and the New England town meeting, whence it spread throughout the entire country. The American philosophy of government still leans strongly to this principle: that people should be allowed to administer their own local affairs in their own way. The presumption is against rigid supervision from above.

However, local self-determination must necessarily be limited by state regulations made in the general interest, public health, safety and welfare (police powers), for no community lives by itself in these days of close contact. Each comes into daily touch with other communities whose interests may be adversely affected by a misuse of local freedom. Conflagrations and epidemics do not stop at town or county boundaries; hence, laxity in one municipality may visit unmerited penalties upon its neighbors. For that reason, each community cannot be permitted entire self-decision in the matter of protecting itself against

fire or disease. Local home rule is a worthy ideal and the onus should continue to be upon him who advocates a departure from it; but with the interlocking of urban communities the obstacles to it are increasing.

Historically in law the right of property has never been looked upon in American law as an inviolable right, a right which a man may use to the detriment of others. Rights of private conduct in law and private ownership are subordinate to the public interest. (See the law of public condemnation.) The ownership of property by individuals can be justified only if they regard themselves as trustees for the common well-being. In earlier days the strong presumption was against any interference with private property or business, and the national tradition still tends this way; but during the past few years the sanctity of private ownership has been losing a good deal of its hold on the public allegiance. The government, as the supposed guardian of the public interest, has been encroaching upon private property and freedom of contract, through the broader exercise of its taxing and police powers (public health, safety and welfare).

The United States has been slowly swinging away from its attachment to individualism and has been placing various erstwhile private enterprises under public control, but America has not yet gone nearly so far as the countries of continental Europe. Banking and the issue of securities have been brought under rigid governmental supervision; the same is true of railroads, public utilities, medical practices, and insurance companies. (All are in commerce.) In the past few years, Congress has attempted to establish an increasing degree of control over the non-commercial operations of mining, timber, agriculture and manufacturing far exceeding anything heretofore known in the United States. These attempts to control document the gradual weakening of the old economic philosophy.

Government has usurped control of manufacturing into commerce, but manufacturing is production, not commerce.

Everyone who is *not* producing redistributes wealth by transporting, selling, or by providing services for one another, until the product reaches an end or final consumer; this is known as commerce, distinct from production. An increasing portion of wealth in the form of commerce is taken and consumed by our state and federal governments in various forms of taxation such as permit fees, licenses, user fees, fines, et cetera.

The natural resource producer and the miner will, in the course of his professional experience, be beset with legal problems generated from urban centers. Although one cannot be expected to have a thorough knowledge of law that will enable him to act at all times as his own legal representative, a practical understanding of certain principles of law will serve as a sort of "first aid" in emergencies when one must act without consulting a lawyer, and will also help him to co-operate intelligently with his legal advisers. He should seek the assistance of a legal advisor in every case where there is the slightest doubt of his position or the position of his employer; and any business enterprise of importance should retain the counsel of an attorney.

One is sometimes forced into court and is always obliged to comply with legal statutes, and thus the miner/producer will find it useful to try to obtain practical knowledge of certain branches of law. He should know something of the common law and contract law, customary usages between man and man from Roman law through English law and our constitution. He should also understand the difference between civil law and criminal law.

American mining law is **a civil land disposal law--one of many**. In order to accomplish the goal of promoting development of the nation's mineral resources, Congress enacted a “grant to land” law that offers inducements to individuals to undertake enterprises of a quasi-public character by mining on the

nation's public domain in order to supply the nation's mineral needs. The government's specific authority to do so stems from Article IV, Section 3, the Property Clause of the Constitution, which states, *"Congress shall have Power to **dispose of** and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."* In *Kleppe v. New Mexico,* the Supreme Court held that the Property Clause power was "without limitations". The system commonly referred to as American mining law is a body of court and Land Department decisions based on a comparatively small number of federal statutes and statutes of certain Western states. "*Pursuant to its Property Clause powers, Congress has enacted several pieces of legislation asserting regulatory authority over mining activities."* (See California Coastal Commission vs. Granite Rock Company, 480 U.S. 572, 606, 1987.)

Under the Mining Law Grant, Congress authorized individuals to acquire property rights by discovering valuable mineral deposits on the Federal Managed Lands and by complying with certain procedural requirements. See 30 U.S.C. Sections 22-54. This **self-initiating property grant and associated rights** were for the broad national purpose of encouraging development of the nation's mineral resources, highways, and surface water rights. Mining law should be construed that the power to make any change belongs solely to Congress, not the administrative agencies. These laws were intentionally made primarily to regulate the acquisition and possession of the right to exploit a mineral deposit; the first federal mining act was passed in 1866 to establish certain general principles that rose out of the helter-skelter location of claims under local rules of Western mining districts in the eighteen fifties and sixties. *These laws define the status of the prospector for mineral deposits, establish his methods of procedure, protect him in possession while searching for minerals, and give him assurance of title when all required conditions have been fulfilled and valuable minerals discovered.* (Read Lindley, Mining Law.)

American mining law has been subjected to a number of political and greed-motivated, illogical and complex interpretations, which have occasioned much litigation, especially those involving so-called *imponderables, amenities, or environmental concerns,* known as "extra-lateral rights." Thus the attorneys mine the miners.

Mining Properties: European mining concession system vs. American claim system.

The mining laws of the world are based on two principles, one relating to "concessions," the other to "claims."

1. The concession system.

Under this system the state as owner has the right to grant concessions or leases to mine operators at discretion and subject to certain general restrictions. It had its origin in the ***ancient regalian doctrine*** that all mineral wealth was the prerogative of the crown or the feudatory lord and obtains [exists] in almost every mining country in the world **except the United States**. More than five-sixths of the mining areas of the world, it is said, are worked under concessions; the British South Africa Company, for instance, controls 440,000 square miles of territory under a Crown concession. In general, **though I totally disagree**, it is said by many that the system, although capable of abuse and tending toward placing the privilege of mining in the hands of a few individuals, is more economical than the "claim" system.

2. The claim system.

The claim system grew up in the early days of mining and milling in the Western United States, following the gold rush of 1849, as an outgrowth of the desire of the prospector to develop a mineral deposit discovered on the public lands/domain, and to have his claim confirmed by law.

Once a former territory becomes a state, the land title and/or mineral grant obligates Congress and the state to honor all express and implied contracts evidenced in the general mining law and land disposal law at the time of statehood, conveying to qualified producers certain valuable deposits of the mineral estate. Mineral estates are not United States property but are disposed to the entryman who *"shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations*", 30 USC 26, held "e*ven as against the United States which nevertheless retains title to the land.*" Granite Rock Co. *v* California Coastal Commission, 1984.

Notwithstanding vaunted opinion to the contrary, today the Property Clause of the U.S. Constitution, Article IV, Section 3, is inapplicable to mining law, except as obligation within a state. And this despite Supreme Court recognition of power therefrom is "*without limitation*", United States *v* Gratiot, 14 Pet. 526, 39 U. S. 527. The Property Clause only applies to government mineral possession of unappropriated U.S. Territory.

The "public land" has many potential uses, until disposed. The Federal Land Policy and Management Act of 1976, FLPMA, conveniently recognizes two general uses, "specific use" and "special use". A valuable mineral deposit location is a specific use on public domain, not a special use of "public land" such as is regulated by 43 CFR 3809. Reference the Act of May 10, 1872, amending the Act of 1870 and the 1866 mining law, clause 1, after "granting" or 30 USC 22, locatable minerals are not mining claims on "public land" but mineral deposits, 30 USC 22, on public domain, 30 USC 26. Public land: surface land managed by federal, state or local government agency. Public domain: federal disposable surface AND subsurface land title.

The haphazard mixing of American mining law (US Code) and Federal Regulations (CFR's) has led to a number of politically motivated, illogical and complex interpretations, which have in the past occasioned much litigation, especially those involving so-called environmental concerns or extra-lateral rights.

The Origin of American Mining Law

In order to understand how the claim system became established in the United States, it is necessary to make a brief historical survey of federal policy regarding the allotting of parts of the public domain to citizens.

The federal government acquired **no property rights within the boundaries of the thirteen original states or the four other Eastern states, and the first acquisitions came when seven of these states, ceded to the federal government territory lying east of the Mississippi River.** Later acquisitions from France, Spain, and Mexico extended the boundaries of the nation to the Pacific Coast and added a tremendous area to the public domain. The purchase or cession of territories such as Alaska, the Hawaiian Islands, and Puerto Rico, did not, however, add to this domain, for previous laws in these territories were ordinarily maintained or special laws for them were passed. Federal statutes regarding public domain do not therefore apply to all territory controlled by the United States.

Since nearly all the lands that did pass under federal statute were acquired from France and Mexico—both of which countries had well-established mining codes under civil law—the influence of the regalian doctrine which was paramount in these countries has been in conflict with the English Whig/British common-law principles that grew up in the United States and confirmed the right of a landowner to the minerals beneath the surface. **The regalian doctrine did not prevail**; and therefore, a patent from the federal government has ordinarily carried with it the right both to hold the surface of the property and to mine all minerals beneath the surface. Title vests in the patentee absolutely, and under most conditions the land becomes private property, subject only to state laws governing the mineral working of private

property involving easements, drainage, and other necessary means to its complete development; **"*ownership, is as good as though secured by patent.*"** (See Lindley, Mining Law, 1914.)

BUSINESS LAW

Contracts. —A contract has been defined as "a bargain or agreement voluntarily made upon good consideration, between two or more persons capable of contracting to do, or forbearing to do, some lawful act." The four main elements needed to make a valid contract are thus:

(1) agreement,

(2) exchange of valuable consideration,

(3) competence of contracting parties, and

(4) legality of object.

The federal mining grant is such a contract.

WATER LAW

Water rights. A supply of water is almost as important to a mining enterprise as a supply of ore, and this was recognized by the Mining Land Grant statute, which confirmed the existing water rights of holders under local laws and gave right of way over the public lands/ domain for ditches and canals used in production purposes, but allowed the right of settlers on these lands to be recompensed for damages resulting from the construction of such ditches and canals.

The Oregon legislature confirmed and clarified in 1899: *Be it enacted by the legislative assembly of the state of Oregon 1899:*

Section 1. That the use of the water of the lakes and running streams of the state of Oregon for the purpose of developing the mineral resources of the state and to furnish electrical power for all purposes is declared to be a public and beneficial use and a public necessity, and the right to divert unappropriated waters of any such lakes or streams for such public and beneficial use is hereby granted. Section 2. All persons, companies and corporations having title or possessory right to any mineral or other land, shall be entitled to the use and enjoyment of the water of any lake or running stream within the state for mining and other purposes in the development of the mineral resources of the state or to furnish electrical power for any purposes; and such waters may be made available to the full extent of the capacity thereof without regard to deterioration in quality or diminution in quantity, so that such use of the same does not materially affect or impair the rights of prior appropriations. Thus, a prior water appropriator or mineral locator cannot insist that the stream above them shall not be used by subsequent locators or appropriators for mining purposes and that the water shall flow to his claim in a state of absolute purity. While the subsequent locator will not be permitted to so conduct his operations as to unreasonably interfere with the fair enjoyment of the stream by a prior locator, or to destroy or substantially injure the latter's superior rights as a prior locator, nevertheless, the law recognizes the necessity for some deterioration or diminution; Any other rule might involve an absolute prohibition of the use of all water of a stream above a prior location in older to preserve the quality of a small portion taken therefrom. ***Any use of a stream that materially fouls and adulterates the water and impairs it for the ordinary purposes of life will constitute a nuisance, and anyone damaged may take the case into court.***

How does the mineral grantee or producer of today, such a small part of the whole of society and yet so important for our society to exist, get to petition his government for grievance?

How is society to learn or remember what and how the mineral grantee contributes to society's existence?

Where can members of society and/or the mineral grantee go to get information for proper protection and application of more thorough knowledge so they can produce the raw materials needed by society?

What happened to the protection of production and property by government?

As stated in Constitutional Chaos by Andrew P. Napolitano, page 188, "*to paraphrase Professor Laurence Tribe of Harvard Law School, the whole reason we have an independent life-tenured Federal judiciary is to put the brakes on democracy, to prevent the tyranny of the majority. Without a judiciary checking the behavior of congress and the president [this would include the agency personal]--making certain they conform to the constitution [and congressional statutes]--nothing could prevent the majority from taking property or freedom from those it despised."*

If we are to survive today's economic and social crisis of both the urban and rural communities, there must be a change of actions and thinking, both economic and social, of our governmental personnel to recognize that the rural communities and their producers have the ability to work within the watersheds to produce the necessities of life for both the urban and rural communities as our forefathers envisioned, and as Congress has codified in statute, to maintain a high standard of living and development.

With the guidance and consultation of the Jefferson Mining District, and having been working with Baker County Economic Development and the Baker County Commissioners and Powder River Watershed Council through federally mandated coordination with the Bureau of Land Management, U.S.D.A. Forest Service, and other state and federal agencies in the development of mines and watersheds in Baker County and other mineral beneficiation properties in other counties on private as well both BLM and FS managed lands, we of Snake River Music Gardens look forward to the communication and development of skills needed to educate the public to develop all types of wealth production, from timber, agricultural, mineral, energy, and water within all of the watersheds of the Western United States.

Tags: Rural producers, constitutional law, rural-urban divide, mining, agriculture, timber, manufacturing, watershed management, landscape management, public lands, public domain.