

Senator Gordon Smith  
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January 18, 2008

Dear Senator Smith,

As representative and Vice President of the members of the Southern Oregon Mining Association and by our members we have become aware of House Resolution 2262, the "Hardrock Mining and Reclamation Act of 2007", H.R. 2262, which recently passed the House of the Congress of the United States. We find this Resolution of great concern, potentially very harmful, and constituting a takings if passing into law. We understand the only remaining obstacle to its passage into law merely awaits Senate action. We feel the threat H.R. 2262 poses is of compelling interest and of dire consequence to us all.

Our concern began in asking the question, Can a grantor lawfully executing and memorializing a free grant of property return at some future time to condition, control, regulate or retake the property subject of the grant, dispossessing the grantee?

Our findings are that a grantor may not come at some future time to steal back the property subject of a grant.

In researching an answer we found the courts long recognizing the Act of July 26, 1866, and May 10, 1872 as amended, "present grant" "*revolutionizing the whole land policy of the government, abdicating in the name of the nation its authority and jurisdiction over the richest mineral possession on the face of God's earth,*" <sup>A1</sup> conveyed the mineral estate of the United States completely, *an absolute gift of all the mineral wealth without condition and without limitation to all citizens.*<sup>A2</sup>

It has long-since been settled that *the federal system treats the mineral estate as a proprietor holding paramount title*<sup>B1</sup> *to its public domain and not as an attribute of sovereignty.*<sup>B2,C1</sup> *Standing in no different relation to the sovereignty of the state than that of any other property which is subject to barter and sale,*<sup>B2</sup> *[t]he minerals do not differ from the great mass of property, the ownership of which may be in the United States or in individuals, without affecting in any respect the political jurisdiction of the state.*<sup>B2</sup> It has as well been settled with that *fixed and definite legislative policy granting its mineral lands the Proprietor, Congress, in the name of the United States, forever abandoned the idea of exacting royalties, instead giving free license to all citizens,*<sup>C2</sup> *the notion of royalty in the product of the mines was forever relinquished.*<sup>B3</sup>

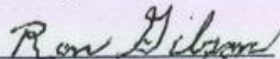
Moreover, the only reservation with the granting of the mineral estate was the mode, the regulation by which a claimant would formalize his intention and to perfect purchase by patent. Being this reservation expressed in the *praesentio grant*<sup>D1</sup> of July 26, 1866, and

May 10, 1872 as amended was regulation only for the purpose of administration the formal location and purchase of the public domain, that the Act *did not purport to be a mining code and its object was not to regulate mining as such*,<sup>A1</sup> in that, [t]he system does not seek to regulate or control mines or mining within the lands held in private ownership, except such only as are acquired directly from the government under the mining laws, and then only forming a muniment of the locator's or purchaser's title,<sup>C3</sup> that the grant gave the locator the right to get a patent for his "mine,"<sup>B4</sup> we believe this otherwise unconditional grant foreclosed the grantor's continuing disposition of the property itself, either in exploitation or right of acquisition of the grantee's mineral property. We can find no authority providing a grantor may come at some future time to steal back the property subject of a grant whether or not in tangible possession of a grantee. We fully appreciate the immense implication of such a finding long-since lost to memory, today requiring resurrection and enforcement.

We believe, as a matter of law, the Resolution approved by the House is without lawful authority in the first instance. We believe, with good cause, these facts divest the Congress of the United States, the grantor of the proprietary mineral holding, of any authority to "amend", condition, control, regulate or retake the mineral estate, long-since, residing in the intention of a grantee. Despite the question upon the lawfulness of the Resolution, we nonetheless vigorously oppose H.R. 2262 as passed by the House, now heading to the Senate and otherwise or by any means, primarily, though not singularly, for the reason thus far stated.

So that we might act in accord, we are writing this day to inquire if you are aware of the threat H.R. 2262 poses? And if you are, we ask what your position is concerning H.R. 2262 and the response, if any, you plan to make to it?

Sincerely,



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A1) The Encyclopedia Americana, 1919, Volume M, Mining Laws of the United States, Page 184.  
A2) Page 185.

B1) Handbook of American Mining Law, Geo. P. Costigan, Jr., 1908. Pg. 11.

B2) Page 10, Moore v. Smaw 17 Cal. 199 79 Am. Dec. 123

B3) Page 15, Ivanhoe Mining Co. v. Consolidated Min. Co., 102 U.S. 167, 173, 26 L.Ed. 126.

B4) Page 19, Section 3

C1) American Law Relating To Mines And Mineral Land within the Public Land States and Territories and Governing The Acquisition and Enjoyment of Mining Rights in Lands of the Public Domain, Curtis H. Lindley, of the San Francisco Bar Volume I, 1897, Section 80.

C2) Section 55, Page 62.

C3) Section 81, Page 84.

D1) Missouri, K. & T.R. Co. v. Kansas Pac. R. Co. 97 U.S. 491 (1878).

CC: Congressman Greg Waldon