



COUNTY OF SISKIYOU

Board of Supervisors

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February 19, 2019

Solicitor General Noel J. Francisco
Office of the Solicitor General
950 Pennsylvania Ave. NW
Washington, DC 20530-0001

Subject: Request for the United States Supreme Court to Hear *Bohmker v Oregon*

Dear Solicitor General Francisco:

The Siskiyou County Board of Supervisors is submitting this letter to urge you to request that the United States Supreme Court hear and consider *Bohmker v Oregon*. Siskiyou County, along with numerous counties throughout Oregon, are concerned with the U.S. 9th Circuit Court decision to rule against federal preemption, effectively ignoring 150 years of mining law and subsequent court decisions.

In codifying the Mining Act of 1872, H.R. 365, passed by Congress and signed by President Ulysses S. Grant, Congress extended an offer that grants all U.S. citizens a statutory right to enter upon federal lands to explore and develop valuable mineral deposits. The Mining Act protects and encourages the development of natural mineral resources through private enterprise, and stands as one of the major statutes of federal land management policy. Federal law preempts the extension of any state land use planning regulation or ordinance on federal lands. The Supremacy Clause provides that "[the] Constitution and the laws of the United States... shall be the supreme Law of the Land..." U.S. Const., Art. VI, Cl. 2. The National Forest Management Act of 1976 and the Federal Land Policy and Management Act of 1976 are the land use planning regulations for federally managed land, and these statutes establish comprehensive regulations for land use planning on public lands and specifically designate the level of state participation.

Similar to the 9th Circuit's decision to allow the State of Oregon to prohibit placer and dredge mining in salmon bearing streams in Oregon on both public and private lands, in 2009, motorized dredge mining was banned throughout California, as a result of California Fish and Game Code section 5653.1(b); citing theoretical environmental damages and negative impacts to fish bearing systems. Mining has played an important role in Siskiyou County's history and economy, and the 2009 ban has had a major impact on miners throughout California, who no longer have the ability to exercise rights granted to them by the United States. As Baker County expressed in their February 07, 2019 letter to you regarding *Bohmker v Oregon*:

Brandon Criss
District 1

Ed Valenzuela
District 2

Michael N. Kobseff
District 3

Lisa Nixon
District 4

Ray Haupt
District 5

“Even though this is not a taking's case, if this law is allowed to stand, it will result in numerous takings of claims, as the owner of a mining claim has 'an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals,...' *Union Oil*, 249 US at 348-49 and Michael Graf, *Application of Takings Law to the Regulation of Unpatented Mining Claims*, 24 Ecology L.Q. 57-, 77 (1997) [' Agency regulation that render an unpatented mining operation unprofitable could be ruled a taking under [*Lucas V. South Carolina Coastal Council*, 505 U~ 1003 (1.992)'s] holding that the governments may not regulate property so as to deny an owner all economic use.']”

Lastly, there is little to no evidence that motorized dredge mining, when coupled with environmental mitigations of seasonal and equipment limitations, is a detriment to the environment. The United States Environmental Protection Agency has recognized that there are benefits to motorized dredge mining activities associated with environmental cleanup and that these mining efforts remove mercury from creeks, streams and rivers, extracting up to 98% of the mercury that a dredge picks up. (Agency, 2002) In addition, activities very similar to motorized dredging have been used in river systems to intentionally stir up compacted river beds to address fish disease concerns and provide a better spawning ground for fish species (Game, 2016).

Based on the above, Siskiyou County is urging that you request that the United States Supreme Court hear and consider this case in the interest of the American people and the rights granted to them by the United States.

If you have any questions or comments please contact, Elizabeth Nielsen, Project Coordinator, at enielsen@co.siskiyou.ca.us or (530) 842-8012. This letter was approved by the Siskiyou County Board of Supervisors on February 19, 2019, by the following vote:

AYES:	Supervisors Haupt, Kobseff, Valenzuela, Nixon and Criss
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

Sincerely,



Brandon A. Criss, Chair
Board of Supervisors

cc: President Donald J. Trump
Secretary Bernhardt, United States Department of the Interior
Secretary Perdue, United States Department of Agriculture
Congressman Doug LaMalfa

Works Cited

Agency, U. (2002). *Mercury Recovery from Recreational Gold Miners*. US Environmental Protection Agency .

Game, I. (2016). *Dredging Effort to Begin at Wilson Springs, Idaho Department of Fish and Game*.