



## COUNTY OF SISKIYOU

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### Board of Supervisors

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July 09, 2019

David Bernhardt  
Secretary of the Interior  
U.S. Department of Interior  
1849 C Street  
Washington, D.C. 20240

Sonny Perdue  
Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington D.C. 20530

**Subject: Miner's Petition for Rulemaking to Stop State-Law-Based Prohibition of Mining on Federal Lands**

Dear Secretary David Bernhardt and Secretary Sonny Perdue:

The Siskiyou County Board of Supervisors is submitting this letter in support of the Miner's Petition for Rulemaking submitted June 18, 2019, on behalf of the Waldo and Galice Mining Districts of Josephine County and nine other mining organizations based in Washington, Oregon, and California.

Siskiyou County encompasses an area of 6,347 square miles, of which approximately 62% is under federal ownership, the majority thereof being within the Klamath National Forest and Shasta Trinity National Forest and open to mining under the Mining Act of 1872 as amended.

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 that establish comprehensive regulations for land use planning on public lands and specifically designate the level of state participation.

Historically, mining was one of the major economic forces in Siskiyou County, utilized largely by local miners on a small scale individual basis. 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 streams. However, there is

little to no evidence that motorized dredge mining, when coupled with environmental mitigations of seasonal and equipment limitations, is detrimental to the environment. The United States Environmental Protection Agency has recognized that there are environmental benefits to motorized dredge mining activities; as mining efforts remove mercury from creeks, streams and rivers, extracting up to 98% of the mercury that mining equipment 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 (Fish and Game, 2016). 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.

Bureau of Land Management (BLM) and US Forest Service (Forest Service) regulations state that miners must have all required state permits to perform mining activities, with the BLM regulations even saying that such state regulation/restrictions could be more stringent than the federal regulations require. There are no set limits.

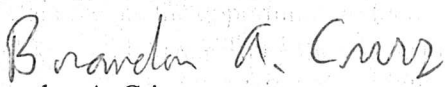
As stated by Josephine County, Oregon in its recent letter, therein lays the problem. If the federal agencies are forbidden from endangering or materially interfering with mining (30 U.S.C. Sec. 612(b)), then how can the federal agencies give the states authority to endanger or materially interfere when they themselves are barred from do so? This issue was recently brought up in both the *People v. Rinehart*, 1 Cal.5th 652 (2016), and the *Bohmker v. Oregon*, 903 F.3d 1029 (September 12, 2018), cases. (Writs of certiorari to the U.S. Supreme Court were sought but not granted.) In the briefing, the Miner's attorney argued in each case that Federal Law preempts State Law, but did not argue that BLM and Forest Service regulations be changed. The time has come to make these changes. Language must be added to the BLM and Forest Service regulations stating that the states cannot restrict mining on federal lands at a level that endangers or materially interferes with the mining operation, and if they attempt to, that such state laws are preempted by the Mining Act of 1872.

Unless the regulations are corrected, the September 18, 2019 2-1 Decision in *Bohmker* by the U.S. 9th Circuit Court of Appeals stands. This holding freely allows states to prohibit any form of mining on lands of the United States that the state doesn't want, for any or no real reason at all, in the name of protecting the environment from an undisclosed and speculative threat or harm.

We appreciate the opportunity to lend our support to this Petition and hope that it is adequately considered and adopted by the Department of the Interior and the Department of Agriculture. If you have any questions or would like to discuss these issues further please contact Elizabeth Nielsen, Project Coordinator, at (530) 842-8012 or [enielsen@co.siskiyou.ca.us](mailto:enielsen@co.siskiyou.ca.us). This letter was approved by the Siskiyou County Board of Supervisors on July 9, 2019, by the following vote:

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

Sincerely,

  
Brandon A. Criss  
Board of Supervisors

cc: President Donald J. Trump  
Congressman Doug LaMalfa  
Senator Brian Dahle  
Paul Yoder, Lobbyist

## **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*.