



# WALDO MINING DISTRICT

**... TO PRESERVE, PROTECT, & PROMOTE MINING**

Post Office Box 1574  
 Cave Junction, Oregon 97523  
 On the web at: [www.waldominingdistrict.org](http://www.waldominingdistrict.org)

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

File # WMDNWS01/02-11

➔ PRES.: TOM KITCHAR ➔ VICEPRES.: DON YOUNG ➔ TREASURER: MARK WAGNELL ➔ SECRETARY: DAVE BARGELT ➔

## JAN. / FEB. 2011 WMD NEWSLETTER

### WMD GENERAL MEETING SCHEDULED

**THERE WILL BE A GENERAL MEETING OF THE WMD ON  
 WEDNESDAY, MARCH 23<sup>RD</sup>**

**BEGINNING AT 7 PM, AT THE JOSEPHINE COUNTY BLDG., DOWNTOWN CAVE JUNCTION**  
 (The red brick bldg. in the middle of Cave Jct. -- The meeting room is around to the back).


### OREGON SUPREME COURT DISMISSES EOMA APPEAL

On November 10, 2010, acting on a Motion to Dismiss presented by the Dept. of Environmental Quality (DEQ), the Eastern Oregon Mining Association's (EOMA) appeal to the Oregon Supreme Court (of the Court of Appeals Dec. 23, 2009 decision in regards to EOMA's 2005 challenge to the 2005 DEQ 700PM Suction Dredge Permit) was "...dismissed as moot."

On November 24, 2010, a Petition for Reconsideration was filed in the OR Supreme Court on behalf of EOMA . . . .  
 (Story cont. on Page 2)

### EOMA & WMD's ONE-HALF POUND OF GOLD DRAWINGS


In order to continue the fight against DEQ and their improper permit, EOMA, with the help of the WMD are holding a series of drawings to raise the necessary funds; with the Final Drawing to be held at the Spring 2012 GPAA Gold Show in Salem, OR.; with a Final Grand Prize of 1/2 Lb. (troy) of placer GOLD (pictured below).



1/2 POUND OF GOLD!

**\$5.00**  
EACH

**6 for**  
**\$25.00**



**18.4 dwt. Nugget**

**The 1<sup>st</sup> Preliminary Drawing will be held on Sunday, April 3, 2011, at the Salem (OR) GPAA Gold Show. Grand Prize in the 1<sup>st</sup> Preliminary Drawing is One Ounce of Gold Nugget Jewelry including an 18.4 dwt. Nugget Necklace (left). Entry into the 1<sup>st</sup> Preliminary Drawing enters you into all additional Preliminary Drawings and in the big Final Drawing. Many other great prizes. **NEED NOT BE PRESENT TO WIN.****

(Story cont. on Page 7)

### 2010 700PM DEQ PERMIT LITIGATION

Much has happened since our last Newsletter (Nov. '10) in the various challenges against the 700PM "In-Stream Mining Permit" issued by DEQ in July, '10.

As of this writing, the EOMA case filed in the Circuit Court of Baker Co. and the NEDC case filed in Multnomah Co. have been moved to the Circuit Court of Marion Co.. In the WMD case filed in the Court of Appeals, the court has ruled that DEQ did issue the 2011 permit as an "order" (instead of a "rule"), and therefore the WMD case will be moved down to Circuit Court. (Story cont. on Page 3)

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# OREGON SUPREME COURT DISMISSES EOMA APPEAL

## BACKGROUND CONCERNING THE 2005 700PM PERMIT:

**1. JULY, 2005:** The Oregon Dept. of Environmental Quality (DEQ) issues the new "700PM" General Permit for all suction dredge operations in Oregon.

**2. AUGUST 2005:** A coalition of environmental organizations (i.e. Northwest Environmental Defense Center (NEDC), Siskiyou Regional Education Project (SREP), and the Hells Canyon Preservation Society (HCPS) – collectively "NEDC") file challenges to the new 700PM permit in the Oregon Court of Appeals; claiming (among other things) that the new permit was not restrictive enough.

**3. FALL 2005:** The Eastern Oregon Mining Association (EOMA) files to intervene in the NEDC challenge, and files a challenge of their own against the new 700PM permit in the Oregon Court of Appeals; claiming (among other things) that it was the wrong permit issued under authority that DEQ does not have.

THE ISSUE: DEQ issues the 700PM permit in part under state law, and in part through an agreement with the U.S. Environmental Protection Agency (EPA) under Section 402 of the federal Clean Water Act (CWA), making the DEQ permit a "National Pollutant Discharge Elimination System" (NPDES) permit . . . the very same kind of permit required by municipal sewage treatment plants and other heavy industries that discharge "pollutants" into (i.e.; "add") waters of the United States!

However, under the CWA, the discharges of "dredged material" back into the very same waters that it came from was exempted from Sec. 402 and EPA jurisdiction and is instead under the jurisdiction of the Corps under Sec. 404 of the CWA. Because of this, EOMA argued that DEQ was regulating suction dredges under 402 authority when if such discharges even fall under the CWA they would properly be under 404 and the Corps and not 402 and the EPA; and because of that, DEQ exceeded their authority and the permit should be declared invalid.

**4. FALL 2005 – DEC. 23, 2009:** What followed was several series of briefs arguing standing & intervention which EOMA won (i.e.; was allowed to intervene and challenge), followed by several layers of briefs arguing the 402 vs 404 issues, followed by oral arguments in the Oregon Court of Appeals on Sept. 5, 2008, which led up to a decision by the OR Court of Appeals Dec. 23, 2009.

EOMA "won" -- in that the court found that the 2005 700PM permit exceeded DEQ's authority and declared the permit invalid. The court agreed with EOMA in that the discharge from suction dredging consisted of "dredged material" (i.e.; rocks, gravel, sand, etc.) which is totally under the jurisdiction of the Corps and Sec. 404 -- and not under the EPA and Sec. 402 . . . which should have been the end of it.

However, the Appeals Court then went on to say that the discharge of "turbid wastewater" (particles that stay in suspension) was under the jurisdiction of the EPA and Sec. 402 of the CWA; in otherwords, the court decision says the discharges from suction dredges requires both a 402 and a 404 permit . . . even when the CWA explicitly states that if you need a 404 permit, then you don't need a 402 . . . (an understanding of the CWA that was upheld by the U.S. Supreme Court as recently as June, 2009 (6 months before the Oregon court reached their decision).

Upon receiving the ruling, EOMA filed a Motion for Reconsideration, which was promptly denied.

**5. MARCH 24, 2010:** With no other avenue open to them, on March 24, 2010, EOMA filed a Petition for Review in the Oregon Supreme Court, asking the high court to revoke the Appeals Court decision removing the duel permit regime and clarifying that Sec. 402 of the CWA does not apply.

**6. SEPT. 17, 2010:** The Oregon Supreme Court agrees to hear the EOMA petition.

**7. SEPT. 27, 2010:** The State (DEQ) files a Motion to Dismiss the EOMA case as moot on the grounds that they (DEQ) are no longer issuing

the 2005 700PM permit but are instead, as of July 2010, issuing the new 2010 700PM permit.

**8. OCT. 8, 2010:** EOMA files a Response to the Motion to Dismiss, and the Declaration of James Buchal, arguing that the issues involved are ongoing and not moot (i.e.; The new 2010 permit is basically the same as the 2005 permit. It is based on the same authority and other than a few relatively minor changes, it is the same wrong highly restrictive permit).

**9. OCT. 21, 2010:** DEQ files a Reply to EOMAs Response, again arguing the issue is moot.

**10. NOV. 1, 2010:** EOMA gets the last word by filing a Surreply to the Motion to Dismiss.

**11. NOV. 10, 2010:** The Oregon Supreme Court Dismisses the EOMA Petition on the grounds of mootness.

**12. NOV. 23, 2010:** EOMA files a last ditch plea as a Petition for Reconsideration (see below). . . and now we wait to hear if the high court will change its decision and hear the case.

**13. During the week of JAN. 17-21:** the OR Supreme Court denied to hear EOMA. The only avenue still open to EOMA is to petition the U.S. Supreme Court – an "if" proposition at best, and certainly very expensive.

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The decision by the OR Supreme Court shows the unmitigated bias of the Oregon courts. Environmental orgs win time after time in court and receive huge settlements when they themselves are not substantially harmed in any way . . . whereas poor defenseless miners just trying to eke out a living but with substantial property rights can get no justice. I believe that once you've read the below you will agree that there is no justice in Oregon, we have become a state governed by corruptible biased humans – not laws!

SHAME ON THE OREGON SUPREME COURT!

BELOW is a complete copy of EOMA's Petition for Reconsideration . . . it speaks for itself:

### IN THE SUPREME COURT OF THE STATE OF OREGON

EASTERN OREGON MINING ASSOCIATION, et. al  
Petitioners on Review,

v.

DEPARTMENT OF ENVIRONMENTAL QUALITY et. al  
Respondents,  
Respondents on Review.

A129732 (Control), A130703, S058354

**Petition for Reconsideration of an Order of Dismissal in the Supreme Court filed November 10, 2010 by Justice Kistler.**

Continued next page . . .

### Argument

The actions of Respondents on Review have put at stake the continuing existence and living heritage of the individual small-scale placer gold miners whose predecessors originally settled Oregon over one hundred fifty years ago. By misinterpreting the federal Clean Water Act, Respondents have imposed a permit regime that is economically prohibitive and environmentally unwarranted, frustrating "the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in . . . the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries". 30 U.S.C. § 21a.

The small-scale prospectors and miners in Oregon, many of whom eke out their subsistence through suction dredging, commenced this legal action more than five years ago, by filing a petition within the sixty-day statute of limitations challenging DEQ's General Permit 700PM, which had a five-year duration. They faced under that 2005 permit (and still face under the 2010 permit), the unlawful result of unwarranted pressure from environmental groups on Respondents. Those groups demanded that Respondents regulate the miners' tiny, hand-operated, lawn-mower engine-powered suction dredges under a complex regulatory scheme designed to cover toxic discharges from industrial facilities and municipal sewage treatment plants: § 402 of the Federal Clean Water Act and its National Pollution Discharge Elimination System, 33 U.S.C. § 1342. The Respondents refuse to recognize that the dredging involves the "discharge of dredged or fill material," which may only be regulated under § 404 of the Act, 33 U.S.C. § 1344—a point confirmed during the litigation by the controlling decision of the United States Supreme Court in *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 129 S. Ct. 2458 (2009). (FOOTNOTE 1: The *Coeur* case characterized mining-related discharges that have the effect of changing the bottom elevation of water bodies as the discharge of "fill material" based on 40 C.F.R. § 232.2, to be regulated exclusively under § 404.) The *Coeur* opinion, the plain language of the Act, the plain language of the controlling regulations, and the legislative history all confirm that Congress never intended the same regulatory regime to apply to both the disposal of sediment and rock dredged from the bottom of water bodies and the discharge of toxic chemicals by manufacturers and others.

Notwithstanding clear federal law, the Court of Appeals, in a decision that lacks any judicial precedent throughout the United States, concluded that the suction dredge discharges here could be parsed in some inherently arbitrary way into (a) larger particles that fell to the bottom of the water bodies faster, and (b) smaller particles that remained suspended longer (causing temporary turbidity), thereby imposing a dual

permitting requirement unknown in federal or any other law. Were this rule of law to be applied to all other operations discharging dredged materials (and not just small-scale miners), the consequences would be grave indeed for the rivers, ports and harbors in the Pacific Northwest. For example, the recent dredging of the Columbia River would have been impossible if DEQ's novel interpretations were equally applied.

After this Court granted review, Respondents moved to dismiss on the ground that the initial permit had expired, and had been replaced by a reissued permit of even shorter duration. But the suggestion by Respondents on Review that the reissued permit regulates a substantively different scope of activities and imposes different conditions is disingenuous: there can be no dispute that both the 2005 and the reissued 2010 permits regulate the "discharge of dredged material" from exactly same small-scale mining devices (FOOTNOTE 2: As is apparent from their first pages, both the 2005 and 2010 permits cover dredges with up to a 30 horsepower motor and six-inch nozzle. The 2010 permit incorporates an additional size restriction for so-called "Essential Salmon Habitat" areas (a restriction previously enforced by the Department of State Lands), and also applies to "in-water nonmotorized mining equipment," but those changes from the 2005 permit are not material to the issues before this Court.) contrary to the United States Supreme Court holding in *Coeur*. That Respondents imposed greater restrictions on discharges in the 2010 permit is utterly immaterial to the questions presented to this Court, for all the restrictions arose by reason of the erroneous application of § 402. (FOOTNOTE 3: Unlike § 404 permitting, § 402 permitting requires compliance with §§ 301, 302, 306, 307, 308 & 403 of the Act. Compare 33 U.S.C. § 1344(a) and 33 U.S.C. § 1342(a)(1).) Nor is the question of whether Respondents might impose similar conditions under state law pertinent to the issues presented to this Court, for Respondents issued National Pollutant Discharge Elimination System (NPDES) permits under § 402, not state permits, and the courts may not presume that Respondents would produce the same permit errors without any presumed federal compulsion to do so.

The premise of any mootness dismissal, that a ruling from this Court would have no immediate effect on the rights of miners, could not be further from the truth. A favorable ruling from this Court on the petition for review, which might be issued soon after argument initially scheduled for January 11, 2011, would permit the circuit courts reviewing the reissued permit to remand that permit to Respondents for further proceedings consistent with this Court's opinion, providing immediate and effective relief to the miners. Among other things, eliminating erroneous application of § 402 will permit Respondents to allow temporary increases in turbidity pursuant to

state law (see OAR 340-41-0036), which they state are not available under NPDES permitting.

This Court's Order leaves the miners subject to at least four more years of unlawful permit restrictions, and leaves the miners in the position of having to start all over in circuit court. This Court's Order also leaves the miners with no realistic chance of obtaining meaningful judicial scrutiny of the important § 402/§ 404 issue they raise, because that question will be regarded as already settled by the Court of Appeals decision this Court has determined to leave in place. And if and when the miners can navigate the treacherous waters back to this Court, the renewed permit will have expired again as well. There is no justice in this at all.

Numerous precedents of this Court, even before the enactment of ORS 14.175, counseled that continuing errors by state agencies could and should be corrected notwithstanding any doctrine of mootness. Some inconsistencies among such decisions presumably gave rise to ORS 14.175, making it clear that even if the former agency policy or practice no longer had any continuing vitality—as it does here—the matter could still be reviewed because it was "capable of repetition" yet "likely to evade judicial review in the future". Here, Respondents do not dispute that they continue the challenged practice of issuing permits for the "discharge of dredged material" under § 402, not § 404.

Yet this Court has dismissed the petition for review without explanation beyond the statement that the petition is moot. This Court has also, contrary to precedent concerning the use of vacatur, explicitly determined to leave the patently erroneous decision in place, again without explanation.

These circumstances are producing a gross waste of taxpayer and private funds through duplicative litigation, and are utterly inimical to the interests of justice and the rule of law in the State of Oregon. With its palpably erroneous decision, the Court of Appeals has condemned an entire industry and Oregon's rich cultural heritage of the individual small-scale prospector and miner to the past, and further corroded the faith of Oregon's citizens in the processes of judicial review. For all these reasons, petitioners seek reconsideration of this Court's decision.

### Conclusion

For the foregoing reasons, this Court should reinstate the petition for review filed by EOMA *et al.*

Dated this 23rd day of November, 2010.

Respectfully submitted,

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Portland, OR 97201

Tel: 503-227-1011

Attorney for Petitioners EOMA *et al.*

## LITIGATION CONCERNING THE 2010 700PM PERMIT

In July of 2010, DEQ reissued the 2005 700-PM permit with some modifications, all of them being more restrictive than the 2005 permit; for instance, the 2010 permit removed the exemption on turbidity and monitoring for dredges with intake hoses smaller than 4.0 inch inside diameter. The new permit also proposes to regulate non-motorized operations such as an instream sluice box or rocker (NOTE: Such non-motorized operations are not required to register and obtain the permit,

although operators are required to have a copy of the permit on hand). The only method of small-scale mining that was specifically exempted from needing the 2010 permit was panning. And, just like all previous DEQ permits, the 2010 permit is issued in part as a National Pollutant Discharge Elimination System (NPDES) permit. Upon issuance of the 2010 permit, challenges were filed against DEQ, as explained in the Chronologic Outline below (next page):

**CHRONOLOGIC OUTLINE OF 2010 PERMIT LITIGATION**

**1. JULY 1, 2010:** DEQ issues a new 700PM permit with even more stringent restrictions than the 2005 permit; and continues to issue the new permit in part under the jurisdiction of Sec. 402 of the CWA as a NPDES permit.

Also, instead of issuing the new permit as a "Administrative Rule" (like all the previous permits), DEQ now issued the new permit as an "Order", bypassing EQC approval and other administrative procedures. By issuing the new permit as an order (instead of as an administrative rule), DEQ forces challenges to the new permit to begin at the Circuit Court level (instead of in the Appeals Court as with challenges to a rule).

Because of the irregularity of issuing these permits as "orders" instead of as "administrative rules" (and other factors), EOMA and the Waldo Mining District (WMD) decide to cover all the bases and file Petitions for Review of the new 2010 700PM permit in the Oregon Circuit Court for Baker County, and in the Oregon Court of Appeals, as outlined below:

**2. SEPT. 24, 2010:** EOMA files a Petition for Judicial Review in the Circuit Court for the State of Oregon in Baker County; arguing once again that it is the wrong permit, under the wrong jurisdiction, and contains unwarranted prohibitive restrictions, etc..

**3. SEPT. 24, 2010:** WMD files a Petition for Judicial Review in the Oregon Court of Appeals, arguing once again that it is the wrong permit, under the wrong jurisdiction, and contains unwarranted prohibitive restrictions, etc..

**4. SEPT. 28, 2010:** NEDC (along with Klamath/Siskiyou Wild and one individual) file a Petition for Review in the Circuit Court for the State of Oregon in Multnomah County, arguing among other things that they will be financially harmed by the existence of suction dredge mining (i.e.; by not managing to stop suction dredge

mining, NEDC claims they will lose credibility with future members and donors and thus suffer economic loss).

**5. POST SEPT. 28, 2010:** At this point, several motions over several issues are filed in the circuit courts by NEDC, EOMA, and DEQ and in the Court of Appeals by WMD and DEQ:

**A. IN THE CIRCUIT COURTS OF BAKER, MULTNOMAH, AND MARION COUNTIES:**

Right after NEDC filed in Multnomah Co., EMOA filed to intervene. At the same time, DEQ filed a Motion to Change Venue in Baker Co. to get the EOMA case moved to Marion County (as that is much more convenient for DEQ employees and state attorneys so they don't have to travel long distances, etc.; and so that the miners of EOMA will, at their own expense have to travel and obtain lodging while attempting to preserve our rights).

**OCT. 22, 2010:** EOMA files the Declaration of Guy Michael in Baker County, further substantiating the EOMA claims to stay in Baker County.

**NOV. 15-19, 2010:** After a lengthy period of briefs, during this week, the Baker Co. court decided in favor of the State and the EOMA case will now be heard in Marion Co.. The State is also working to get the NEDC case transferred to Marion Co., and once that is settled, the decision on intervention will be decided. Also yet to be decided are motions from EOMA that, 1) NEDC does not have standing and their case should be denied; or at the minimum, 2) the court should put a "stay" on the NEDC case until the EOMA case is heard. In the meantime, we wait to hear from the Multnomah Co. Circuit Court on the NEDC issue(s).

**JAN. 14, 2011:** A hearing was held in the Circuit Court for Multnomah County concerning the state's motion to change venue in the NEDC case over to Marion County. NEDC lost, and their case will be transferred to Marion Co. just like the EOMA case.

**JAN. 18, 2011:** NEDC et al. file an Amended Petition for Review adding (amongst other things) more petitioners. New to the NEDC petition is: Siskiyou Project, Hells Canyon Preservation Council, Pacific Coast Federation of Fisherman's Associations, Institute for Fisheries Resources, Oregon Coast Alliance, and Oregon Wild.

**B. IN THE OREGON COURT OF APPEALS**

Soon after WMD filed their Petition, DEQ argued that WMD applied to the wrong court (as the permit in question was issued as an "order" instead of as an "administrative rule"). WMD has responded that the "order" was really a "rule" and therefore they are in the proper court; or, if found to be in error (and the "order" was in fact an "order"), WMD asks to be transferred to the Circuit Court of Josephine County.

**JAN. 3, 2011:** The Oregon Court of Appeals ruled that the 2010 700-PM permit was issued as an order and not as a rule, and therefore WMD may not be heard in the Appeals Court but will instead be transferred to Circuit Court (in either Josephine or Marion Counties).

**AS OF JAN. 25, 2011:** Motions have been made by DEQ in the Circuit Court of Marion Co. to consolidate all three (3) cases against DEQ (i.e.; EOMA, NEDC & WMD). NEDC has requested that all parties stipulate to intervention in the other parties cases. As we go to print, EOMA and WMD are preparing a response to the DEQ and NEDC motions.

**TO ALL FRIENDS OF MINING:** To date, thousands of dollars have been expended by the mining community to challenge the 2010 DEQ permit, and to protect all of us from the seemingly frivolous challenge issued by the environmentalist community . . . and we are still a long way from seeing the inside of a courtroom! An unfortunate aspect of this litigation is, if one party does not respond to another party's motion or brief, then that motion or brief is considered to be unchallenged and stands. Because of this, parties with more and better funding (e.g.; the State and the enviros) have the tendency to file multiple motions and briefs with the hopes that the poorer funded party will eventually bow out due to lack of funds to continue.

Case in point: The initial Petitions for Judicial Review were filed in late September, 2010. It is now late January, 2011, some four months later, and all that has been accomplished is the probable consolidation of all cases in the Circuit Court of Marion County (and the expenditure of thousands of dollars).

The ONLY way EOMA & WMD can continue to fight for our rights to mine our property (under the U.S. Mining Law of 1872) is if we receive the continued financial support of the Oregon (and elsewhere) mining community. We urge you to Please Dig Deep and support our efforts by entering our big 1/2 Pound of Gold Drawings as often as possible as soon as possible, and throughout the coming year. It should be known that even though our attorney is charging below market rates and is more than willing to allow us to do research and offer advice (saving us thousands of dollars), we still fully expect this litigation (in Circuit Court) will cost at least \$30-40,000, not including the expected appeals by whichever side loses. Simply put, those with more money usually win. And worse, if we lose, all hopes of any meaningful small-scale instream mining in Oregon will be a thing of the past!

**PLEASE HELP US NOW . . . AND FOR THE MONTHS TO COME!**

## UNBIASED COURTS?

### COPIES OF THE COURT DOCUMENTS ARE AVAILABLE

Copies of the many documents filed in the courts regarding the DEQ permit litigation can be viewed (and downloaded) on the WMD website at:

[www.waldominingdistrict.org](http://www.waldominingdistrict.org)

As previously mentioned, EOMA filed their Petition for Review in the Circuit Court for Baker County; and the state moved to transfer them to Marion County. One of EOMA's arguments to stay in Baker Co. was that it was felt that the miners might get a fairer decision in eastern Oregon than in western Oregon considering all the anti-mining press in all the media last fall. Unfortunately, EOMA's pleas fell on deaf ears.

It is interesting to note however that when NEDC filed their Petition in Multnomah Co., the first judge assigned to the NEDC case had to recuse himself (i.e.; bow out), on the grounds that he was a past President of NEDC! So, they assigned a second judge . . . and he too had to recuse himself as he admitted to having donated to NEDC! (And they wondered why EOMA wanted to stay in Baker County!)

## KS WILD FOIA's WMD PRESIDENT

On November 29, 2010, I received a certified letter from BLM Portland informing me that on October 27, 2010, the Klamath / Siskiyou Wildlands Center (KS Wild) of Ashland, OR, submitted a Freedom of Information Act (FOIA) request to BLM requesting: ". . . all documents, correspondence, emails, notes, files or any other information regarding mining claims, activity or occupancy on Medford BLM lands by Mr. Tom Kitchar."

BLM's letter came with a computer CD which included copies of all the documents BLM intended to send to KS Wild. BLM informed me that they were redacting (crossing out) any personal information such as my email address, social security number, phone number, and any dollar amounts I had included in my estimate of reclamation bond. Some of the documents KS Wild received included copies of my Plans of Operation for mining, Notice of Occupancy (including detailed maps of my claims and the location of my camp), and my estimate for the reclamation bond. As none of this information is considered confidential under the FOIA, I had no grounds to withhold this information.

In an attempt to find out who else KS Wild wanted to know about, I sent a FOIA request to BLM on January 11, 2011, asking for:

1. Copies of any and all Freedom of Information Act (FOIA) requests submitted (via letter, email, fax, or electronically) to the BLM Medford District from Klamath Siskiyou Wildlands Center (KS Wild), P.O. Box 102, Ashland, OR 97520, within the year 2010 regarding mining operations and activities on BLM managed lands.
2. This request includes KS Wild FOIA requests for information regarding specifically named individuals, associations, claim owners, or mining organizations; or mining in general.
3. WMD requests the status of each (if any) KS Wild FOIA request (i.e.; has the FOIA been responded to, and if so, when).
4. WMD requests information regarding the payment(s) of any fees associated with any FOIA requests by KS Wild in 2010 concerning mining (i.e.; amount(s) of fees paid, or, was a fee waiver granted).

From the responsive documents I received, it was learned that KS Wild submitted the following FOIA requests to BLM concerning mining

activities on the Medford District BLM managed lands:

- A. 3 FOIAs regarding the operations of Mr. Clifford Tracy on or near Sucker Ck.,
- B. 3 FOIAs on the "Bean" mining claim on or near Sucker Ck.,
- C. 1 FOIA on Walt Freeman (all documents),
- D. 1 FOIA dated January 20, 2010, requesting "... copies of all Notices of Intent for mining operations on the Medford District BLM."
- E. 1 FOIA dated March 23, 2010, requesting "Any Plans of Operation or Notices of Intent submitted to the BLM in 2010 regarding mining operations in the French Flat ACEC (Grants Pass Resource Area)."
- F. 1 FOIA dated July 22, 2010, requesting copies of "All notices of non-compliance or other enforcement actions or documentation regarding mining activities on Medford District BLM lands that were not in compliance with BLM policies, requirements or permits since the year 2004."
- G. 1 FOIA dated August 18, 2010, requesting "...copies of all Notices of Intent for mining operations on the Medford District BLM that have been submitted since the date of my last request, which was January 20, 2010."

In most of KS Wild's FOIA requests, they state: "These documents will provide an indication of whether the BLM has carried out its responsibilities pursuant to the National Environmental Policy Act, the Federal Land Policy Management Act, the Endangered Species Act and the Clean Water Act. Release of this information will benefit the public, which has an interest in knowing whether and to what extent the Medford BLM is satisfying its statutory and regulatory requirements. KS Wild will use the requested information to further the public's understanding of BLM management by disseminating the information through its newsletter, website, and media contacts to our members and private citizens in Oregon and beyond."

It is interesting to note that in the responsive documents I received on Jan. 25, 2011 from BLM concerning all FOIAs submitted by KS Wild in 2010, the KS Wild FOIA regarding my mining activities & occupancy dated Oct. 27, 2010, was not included (apparently because BLM did not

respond to this FOIA request until 2011). I have since (on Jan. 27, 2011) submitted another FOIA request to BLM, asking for a list of all FOIA requests submitted by KS Wild regarding mining activities (other than the ones listed above) in 2010 and 2011 (to date).

Although I have not checked, it must be assumed that KS Wild, the Siskiyou Project, and/or some other environmental org has submitted similar FOIA requests to the Siskiyou Natl. Forest (SNF) to learn about mining activities on SNF managed lands.

### BE WARNED:

#### BIG BROTHER IS WATCHING YOU !

Don't be fooled by what KS Wild "claims" is the reason they want this information (i.e.; to see how well the BLM (or FS) is doing its job). NO! Their goal is to micro-analyze and scrutinize any and all mining activities with the hopes of finding that someone did not cross all the "T"s or dot all the "I"s so that they can sue the BLM, the FS, or possibly the miner.

BE PREPARED ! Unfortunately, in these days when the government agencies seem to pick and choose which laws they feel like upholding, the miners private property rights are long forgotten. However, NO ONE, not even the federal land management agencies, has the right to materially hinder or interfere with mining.

PROTECT YOUR RIGHTS ! The WMD strongly urges you to always pack a digital camera with you when out in the field. If or when any stranger appears near your operations or activities, take their picture (several). If you can take photos (several) of their vehicle, and try to include the license plate.

DOCUMENT EVERYTHING ! Write down the date and time. For those of you that leave equipment unguarded, the purchase and use of a motion detecting camera is advised.

The WMD strongly recommends that all miners keep their activities as least disturbing as possible. Keep your operations and camp neat and clean. Do not invite trouble. Keep in mind that these people (such as folks from KS Wild, Siskiyou Project, etc.) are out looking for anything they can find or do to make your life miserable with the hopes of stopping your mining activities. They do not recognize that we have congressionally granted statutory rights to be on

the public domain lands (and they don't – all they (and the non-mining general public) have is a mere privilege!).

And remember, you are not in any way required to give anyone other than a bone fide law enforcement officer your name or address, or other personal information.

If anyone is interested in communicating with the folks at KS Wild that submitted the FOIAs, they are:

Lesley Adams, Rogue Riverkeeper  
Klamath-Siskiyou Wildlands Center, P.O. Box 102, Ashland, OR 97520 - 541-488-5789 - lesley@kswild.org

And

George Sexton, Conservation Director  
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*Maybe you want to write or call them and tell them what a good job they are doing . . .*

## SISKIYOU CREST NATL. MONUMENT UPDATE

As announced in our last few Newsletters, KS Wild of Ashland (OR) secretly submitted a proposal to the Obama administration to create a new 600,000 acres National Monument straddling the Oregon/California border.

On Monday, January 31, OR Congressman (Rep. 2<sup>nd</sup> D) Greg Walden held a press conference on the steps of the Jackson County Courthouse (Medford) announcing that he was introducing a bill in Congress that would stop the President from using the Antiquities

Act for creating new Natl. Monuments (or at least big ones). Present at the press conference were Jackson & Josephine Co. Commissioners, along with approximately 40 individuals, many of whom represent local mining.

Congressman Walden also mentioned Secretary of Interior Salazar's "Wild Lands Initiative", which would allow the BLM to create de facto Wilderness areas without congressional oversight. The following is from a press release handed out at the conference:

\*\*\*    \*\*\*    \*\*\*    \*\*\*    \*\*\*    PRESS RELEASE    \*\*\*    \*\*\*    \*\*\*    \*\*\*    \*\*\*

Congressman Greg Walden  
Serving the people of Oregon's Second District  
Monday, January 31, 2011

**The Monuments controversy and the "Wild Lands Initiative"**

**SKIRTING CONGRESS TO WALL OFF PUBLIC LAND**

Last February, a memo leaked from the Interior Department detailed a wish list from the administration of 17 new national monuments across 11 western states, including Oregon. If successful, this takeover would lock up 13 million acres of land, all without congressional approval.

One of the areas being considered is an expansion of the Cascade-Siskiyou National Monument called the Siskiyou Crest National Monument – the designation would spread into California and lock up 600,000 acres.

**How can they do this?** By using the 1906 Antiquities Act, which gives the President the authority to protect lands for archaeological purposes – lands that contain important historic landmarks, prehistoric structures, or other objects of scientific significance.

The act instructs the President to reserve "the smallest area compatible with the proper care and management of the objects to be protected." Back when the bill was being written, the argument was over whether to allow the maximum designation to be 320 or 640 acres.

Now we have roughly 120 monuments nationwide that cover more than 70 million acres. That's an average of 583,000 acres per monument.

Rep. Waldo introduced legislation last year to require congressional approval for all monument designations in Oregon.

He is co-sponsor of legislation this year to require congressional approval for all new monument designations.

**WILD LANDS INITIATIVE**

Issued in December, Secretarial Order 3310 would give BLM the power to wall off land from the public under the guise of protecting wilderness characteristics.

This is de facto wilderness creation, and neither Congress nor taxpayers get a say.

In fact, under this order, a member of Congress can simply introduce legislation and the administration will respond by treating the land as wilderness, regardless of whether it becomes law.

Rep. Walden has requested an oversight hearing on this new secretarial order, and received assurance that the committee will perform oversight on this issue.

## HB 2351 WOULD RAISE RECORDING FEES

In the Oregon 76<sup>th</sup> Legislative Session, House Bill (HB) 2351 could add \$10.00 to the list of fees for the recording of almost any document in county recorder's offices statewide. These funds would be earmarked for the "Public Land Corner Preservation Fund" (PLCPF) (NOTE: Many counties, including Josephine, already collect \$10.00 per document for the PLCPF. HB 2351 would raise the maximum limit for the PLCPF from \$10.00 to \$20.00.)

**ORS 203.148. (1)** The county governing body may establish by ordinance a fund to be known as the Public Land Corner Preservation Fund. Moneys in the Public Land Corner Preservation Fund shall be used only to pay expenses incurred and authorized by the county surveyor in the establishment, reestablishment and maintenance

of corners of government surveys under ORS 209.070 (5) and (6).

A worthy purpose, no doubt. However, the continued addition of new "fees" to the costs of recording required by law documents has gotten to the point of absurdity. For instance, not too long ago in Josephine Co., it cost \$5.00 to record an Affidavit of Labor and an additional \$0.50 for each additional claim on the document. In 2010, it cost \$24.00 to record an Affidavit with just one claim (plus \$5.00 for each additional claim); and if HB 2351 passes, and your county decides to raise the fees, it will cost \$34.00. When does it end?

Fortunately, in the OR 74<sup>th</sup> & 75<sup>th</sup> Sessions, we successfully managed to amend HB 2436 (which

passed, and adds \$15.00 per document to raise funds for Low Income Housing for minorities) to exempt the required annual filings (i.e.; Assessment Affidavits, Payment of Maint. Fee, Intent to Hold) necessary to hold mining claims. Our exemption (to the \$15 fee) is found at ORS 205.323(3) and reads: (3) Subsection (1)(c) of this section does not apply to the recording or filing of: (a) Instruments required under ORS 517.210 to maintain mining claims;

(Note that the exemption does not cover the filing of Location Notices, Quit-Claim Deeds, etc. This is because the filing of those documents is a voluntary act, and (normally), a one-time filing; whereas the required annual filings necessary to maintain an unpatented mining claim are directly

... tied to the continued holding of your property where if you fail to file, you leave your claim open to relocation by others.

Work is being done to add our exemption to HB 2351. It is not fair (or legal) to make claim owners pay more than their fair share. No other class or group of citizen property owners are required, by law, to make the annual filing of documents a pre-requisite to the continued holding of your property. We have already

managed to get our exemption in another bill this session, (HB 2245), which adds \$1.00 to recording fees for the State Archivist Fund.

At present, all but the \$5.00 recording "fee" paid when recording annual claim documents is in reality a "tax" (as failure to file means the loss of the property); and under OR law, unpatented mining claims cannot be taxed: **ORS 307.080:** "... mining claims are exempt from taxation prior to obtaining a patent..."

Special Thanks and Recognition is due to Mr. Tom Quintal, Director of Government Affairs for Willamette Valley Miners. Tom has unselfishly devoted many days on end at the state capitol consulting with legislators and staff of the legislative council to get our exemption added to these taxes pretending to be fees. Words of Thanks can be sent to Tom at: WVM, P.O.B. 13044, Salem, OR 97309-1044.



EOMA & WMD's

## ONE-HALF POUND OF GOLD DRAWINGS

In order to continue the fight against DEQ and their improper permit, EOMA, with the help of the WMD are holding a series of drawings to raise the necessary funds; with the **Final Drawing to be held at the Spring 2012 GPAA Gold Show** in Salem, OR.; with a Final Grand Prize of 1/2 Lb. (troy) of placer GOLD (pictured at left).

**The 1<sup>st</sup> Preliminary Drawing will be held on Sunday, April 3, 2011,** at the Salem (OR) GPAA Gold Show. Grand Prize in the 1<sup>st</sup> Preliminary Drawing is **One Ounce of Gold Nugget Jewelry** including an 18.4 dwt. Nugget Necklace (see Page 1). *Entry into the 1<sup>st</sup> Preliminary Drawing enters you into all additional Preliminary Drawings and in the big Final Drawing.*

**NEED NOT BE PRESENT TO WIN.**

**Other great prizes to be given away at the 1st Preliminary Drawing include 1st Place:** One "3-Day Wines Camp Gold Mining Adventure Trip" (for 1). Trip includes all food & lodging along with opportunities for prospecting, dredging and for common shared operations. Everybody goes home with some gold! Valued: \$500.00. (Donated by Oregon Gold Trips, Dave Rutan, and Chetco River Mining & Explorations, LLC. Please visit our website for more information including lots of photos at: [www.oregongoldtrips.com](http://www.oregongoldtrips.com)). Other great prizes to be added.

**Prizes to be given away at the big Final Drawing (Spring, 2012) include the GRAND PRIZE:** ONE-HALF POUND (Troy) OF REAL PLACER GOLD! Valued (@\$1400/oz): \$8,400.00. (Donated by the Eastern Oregon Mining

Association, Waldo Mining District, & miners everywhere).

**1ST PLACE:** One brand new 2009 LAMBRETTA MOTOR SCOOTER.



Winner shall have the choice of a "UNO150" or a "DUO50" (FOB Vancouver WA). Valued: \$2,900.00 (Donated by Oregon Gold Trips & Dave Rutan) For more information go to: [www.lambrettausa.com](http://www.lambrettausa.com)

**2ND PLACE:** One "3-Day Wines Camp Gold Mining Adventure Trip FOR TWO". Trip include all food & lodging for two, along with opportunities for prospecting, dredging and for common shared operations. Everybody goes home with some gold! Valued: \$1,000.00. (Donated by Oregon Gold Trips, Dave Rutan, and Chetco River Mining & Explorations, LLC).

ADDITIONAL PRIZES TO BE ANNOUNCED. **Please visit our websites for Official Drawing Rules, How to Enter, and more information at: [www.waldominatingdistrict.org](http://www.waldominatingdistrict.org)**

**BASIC RULES:** All entries in the 1<sup>st</sup> Preliminary Drawing will be eligible to win in all subsequent EOMA/WMD drawings including the Final Drawing to be held at the 2012 GPAA Gold Show (Salem, OR). **WHO MAY ENTER:** Anyone at least 18 years of age. (RULES continued on Page 8) **OFFICIAL COUPON NOT NEEDED:** To Enter, please fill out the below (or send us the required information) along with your entry fees to the address below:

NAME	PHONE	EMAIL (optional)
ADDRESS	STATE	ZIP
AGE		
TOTAL NUMBER OF ENTRIES: <input style="width: 40px; height: 20px;" type="text"/>		
AMOUNT ENCLOSED (\$5 EA. OR SIX FOR \$25) \$ <input style="width: 100px;" type="text"/>		

PLEASE MAKE CHECKS OR M.O.'s PAYABLE TO: EOMA

**SEND TO: EOMA/WMD DRAWING, P.O.B. 1574, CAVE JUNCTION, OR 97523**

DRAWING RULES CONT.: Each entry comes with a coupon worth "\$5 Off" the price of an EOMA 1 oz Silver Medallion (go to [www.eoma.org](http://www.eoma.org) for more information), which is redeemable by contacting EOMA at: EOMA, P.O.B. 932, BAKER CITY, OR 97814. Only one coupon per medallion purchase.

Those wishing a \$5 Off Coupon and/or a receipt for their entries should include a Self Addressed Stamped Envelope with their entries.

EOMAWMD will provide shipping for all prizes within the United States (with the exception of the Lambretta Motorscooter, which is F.O.B. Vancouver, WA.) Winners of the Wines Camp Gold Adventure Trips must provide their own transportation.

OFFICIAL DRAWING RULES, downloadable/printable Entry Coupons and an updated Prize List are posted on the WMD website at: [www.waldominingdistrict.org](http://www.waldominingdistrict.org).

**WHERE DID IT COME FROM?**

Where did "Piss Poor", and other adages come from? Here's some interesting history from the 1500's: They used to use urine to tan animal skins, so families used to all pee in a pot & then once a day it was taken & sold to the tannery.....if you had to do this to survive you were "Piss Poor" But worse than that were the really poor folk who couldn't even afford to buy a pot.....they "didn't have a pot to piss in" & were the lowest of the low.

Baths consisted of a big tub filled with hot water. The man of the house had the privilege of the nice clean water, then all the other sons and men, then the women and finally the children. Last of all the babies. By then the water was so dirty you could actually lose someone in it. Hence the saying, "Don't throw the baby out with the Bath water!"

Most people got married in June because they took their yearly bath in May, and they still smelled pretty good by June. However, since they were starting to smell... Brides carried a bouquet

of flowers to hide the body odor. Hence the custom today of carrying a bouquet when getting Married.

Houses had thatched roofs-thick straw-piled high, with no wood underneath. It was the only place for animals to get warm, so all the cats and other small animals (mice, bugs) lived in the roof. When it rained it became slippery and sometimes the animals would slip and fall off the roof. Hence the saying "It's raining cats and dogs."

Those with money had plates made of pewter. Food with high acid content caused some of the lead to leach onto the food, causing death by lead poisoning. This happened most often with tomatoes, so for the next 400 years or so, tomatoes were considered poisonous.

Lead cups were used to drink ale or whiskey. The combination of lead and alcohol would sometimes knock the imbibers out for a couple of days. The imbibers would collapse on the road. Someone

walking along the road would take them for dead and prepare them for burial. They were laid out on the kitchen table for a couple of days and the family would gather around and eat and drink and wait and see if they would wake up. Hence, the custom of "holding a wake".

England is old and small and the local folks started running out of places to bury people. So they would dig up coffins and would take the bones to a bone-house, and reuse the grave. When reopening these coffins, 1 out of 25 coffins were found to have scratch marks on the inside and they realized they had been burying people alive. So they would tie a string on the wrist of the corpse, lead it through the coffin and up through the ground and tie it to a bell. Someone would have to sit out in the graveyard all night, "the graveyard shift", to listen for the bell; thus, someone could be, "saved by the bell" or was considered a "dead ringer".

**WALDO MINING DISTRICT  
2011 MEETING SCHEDULE**

<b>March 23</b>	<b>August 31</b>
<b>May 18</b>	<b>October 26</b>
<b>June 29</b>	<b>December 14</b>

**NOTE:** All meetings begin at 7PM. All meetings held at the Josephine County Bldg. in Cave Junction, OR.

**DON'T FORGET TO CHECK YOUR WMD DUES DUE DATE** (on address label) **THOSE OF YOU THAT WOULD LIKE TO RECEIVE YOUR WALDO NEWSLETTER VIA EMAIL** should send your email address to. [waldominingdistrict@hotmail.com](mailto:waldominingdistrict@hotmail.com)

**DISCLAIMER**

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**WALDO MINING DISTRICT - 2011 MEMBERSHIP, RENEWAL & DONATION FORM**

PLEASE CHECK

NEW MEMBERSHIP

RENEWAL

DONATION

INDIVIDUAL ... \$15.00

FAMILY ... \$17.50

AMOUNT ... \$ \_\_\_\_\_

name (print)

date

phone

address

city

state

zip

EMAIL (PLEASE PRINT CLEARLY!)

Please check for email Newsletter only.

**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@hotmail.com](mailto:waldominingdistrict@hotmail.com), OR VISIT US ON THE WEB AT [www.waldominingdistrict.org](http://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*