



The **SENTRY**

Public Lands for the People Inc. Est. 1990

California pulls out “immunity card”

Sad Day for SB 670 Lawsuit

Federal Judge England did not rule on the merits of the PLP v. SB 670 case.

Except on jurisdiction even though we had the 1850 Ca. Admissions to the Union, which stated that the State of Ca. could not interfere with the disposal of federal lands. We felt that the state had really relinquished their immunity rights on this particular issue. This also moots the Injunction on March 25th. There is no reason for us to spend the time to attempt to second guess Judge England’s motives for his decision, but I did feel that he already had his mind made up.

UPON ADMISSION TO THE UNION CALIFORNIA WAIVED AND CONGRESS ABROGATED ITS IMMUNITY TO SUIT IN FEDERAL COURT

On September 9, 1850, Congress passed an Act for the Admission of California into the Union. 31 Cong. Ch. 50, September 9, 1850, 9 Stat. 452. In critical part, that Act states as follows:

“Sec. 3. And be it further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned. . .” [Exhibit “D”].

For the above reason PLP and the Attorney felt that the State of California had waived any immunity under the 11th Amendment of the Constitution.

The alternative then and now was to file in state court, file the case as a related case with the case on Hillman Karuk, and that Injunction to prevent the Ca. DFG from issuing a permit This case being before Judge Roesch. We already know how much Judge Roesch likes miners. Now Judge England in the Federal lawsuit against SB 670 and the State of Ca. says that we have our remedy in state court and again we will have to file a related case to the Hillman case going before Judge Roesch again. We felt before we filed in Federal Court, and now that this whole thing is a Federal Question and should be heard in a Federal Court.

We will take a few days and mull over the direction we must go and move in that direction. We will update you as to what is decided but we have no intention of giving up. I apologize for not being successful on this Federal Court issue but no one can second guess what any Judges reason for an unfair decision.

Thanks for you support and patience

Jerry

California petitioned for dismissal based on the Eleventh Amendment to the [United States Constitution](#) which deals with each [state's sovereign immunity](#) from being sued in federal court by someone of another state or country. It reads “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

West End Prospectors Corp. is having a “Recession Special” during our 2010 membership drive. Visit our website www.wepcgold.com or call Don Crites for information (626) 919-3645 or email Dcrites@Juno.com \$165 -> \$100

PLP Board of Directors meetings

meets on the **2nd WEDNESDAY** of each month 7 PM @ Memorial Park, on 3rd and Orange in Azusa. You are invited to attend.
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2. Call Jim Lewis 805-485-7513 Goldcado1@aol.com

Prizes for Legal Fund Raffle June 17 2010

- | | | |
|---|---------|----------------------------|
| 1. 160 ac AZ Mining Claim-PLP----- | \$ 7500 | 1 Ticket = \$1 Donation |
| 2. 4" Keene Ultra Mini 6.5 HP Honda Dredge w/Compressor----- | \$ 3150 | 12 Tickets = \$10 donation |
| 3. 1 oz Placer Gold-Roger Plata----- | \$ 950 | 24 Tickets = \$20 donation |
| 4. Whites GMZ Metal Detector-Jimmy Sierra, CA----- | \$ 800 | 36 Tickets = \$30 donation |
| 5. Custom Gold Pendant-Natural Gold Jewelry----- | \$ 400 | 60 Tickets = \$50 donation |
| 6. Deluxe Blue Bowl Kit-Pioneer Mining Supplies----- | \$ 250 | 120 Tickets \$100 donation |
| 7. 1 Yr. Membership Golden Caribou Mining Assn-Gordon Burton-\$ | 225 | 12 Tickets for every \$10 |
| 8. Gold Nugget Pendant-Scott Warner----- | \$ 200 | |
| 9. 4.4 grs Alaska Placer-Ed Romine----- | \$ 160 | |
| 10. Badger Pick-Apex Picks----- | \$ 150 | |
| 11. Crystalline Gold Tie Tac-Scott Warner----- | \$ 100 | |
| 12. Hystware Mines & Minerals CD-Gary Hiestard (Hyatware)----- | \$ 100 | |

NAME _____

PHONE _____

When "Recreational" will bite you

In July of 2009, The Chattahoochee-Oconee National Forest Supervisor placed a moratorium on gold mining, rock collection or removal of any minerals from the forest. This was to be a temporary suspension until the USFS could determine if this type on mineral collection was legal, and they asked for an official legal opinion for the Office Of General Counsel (OGC) in Washington, DC.

This all started because in the fall of 2008, a USFS law enforcement officer cited a couple for causing damage to natural resources and for removing government property under 36 CFR 261.9 (a) and (b). These individuals had been collecting staurolite, also known as Fairy Crosses. The individuals had dug extensively over a fairly large area and were removing staurolite by the five gallon bucket load. The individuals contested the charges brought against them and the case ended up in court. In the spring of 2009, the court case was resolved and the two individuals paid their fines.

As a result of this case, some personnel on the Chattahoochee-Oconee National Forest involved in law enforcement and minerals management were informed by both Washington and the Regional Offices that the USFS does not have the authority to allow any type of mineral collection from the National Forest.

Myself and others at this point, knew we had to swing into action. Darrell and myself began making contacts for help. Jerry Hobbs at PLP, put us together and gave me instructions on how to proceed, by starting with an FOIA letter. I did not know much about the PLP, but I had discovered PLP through my GPAA membership. I joined PLP immediately.

We began by contacting all persons we knew, our congressmen in Washington, GPAA State chapters in Georgia and surrounding states, because this could have far reaching consequences. Basically we knew we had to make a lot of Noise. So, many, I'll never know them all called the District Office of the USFS and let them hear

about their displeasure in this action. Many of us filed official inquiries with our congressmen. As a result, the moratorium has been removed. The USFS has decided to follow the present CFR code of federal regulations concerning mining laws that are administered by the BLM.

Here is the most important point I'd like to make here. The USFS was approaching this as "hobby collection of minerals" We small miners here in Georgia were our own worst enemy, by self-defining ourselves as "recreational gold prospectors." I know now, there is no provision in the Mining Law, or the 228A regulations referencing "recreational" mining. Group recreational activities trigger thoughts of special-use permits by the USFS. There is no statutory or regulatory authority for removing mineral specimens on the National Forest lands as a recreational activity. The only authority is under the mining law and one must make sure their activities comply with section 22 of the Mining Law and 30 USC 612 (reasonably incident to prospecting, mining and processing).

Everyone, should drop "Recreation" from their vocabulary. Under existing federal law, mining is the priority-use of the public lands. Regulations can only be imposed to lessen unnecessary impacts. Regulation cannot be used to prohibit mining. The regulations imposed in this forest are very restrictive to say the least. However, we gold prospectors can still prospect for gold in roughly 98% of the more 800,000 acres of the forest.

The rules of gold prospecting and mineral collection can be viewed at www.fs.fed.us/conf/

I would like to thank all those who helped and gave advise. Jerry Hobbs at PLP, Dave McCracken at the New 49ers, GPAA members in Georgia Chapter and surrounding states. Darrell Adams had more work in this action than I. Actually, Jerry Hobbs was the one that got us together on this. Anthony Hall - PO box 1013 - Social Circle, GA. 30025 PLP 1589 - GPAA 276486

FEATURE STORY

What you can do if you are persistent and do your due diligence

PLP Gets the Fee

by Walt Wegner Vice President, Public Lands for the People.

Me being as angry as everybody else regarding SB670 prohibition on suction dredge mining in the State of California, I wanted to take action immediately.

August 10th 2009 I wrote a letter to Donald Koch, Director of California Department of Fish & Game, certified return receipt requested as I do with all official correspondence, stating that I purchased a dredge permit on May 12, 2009 in the amount of \$47 and I included a copy of the application and the credit card receipt and stated that due to the subsequent legislation SB670 my permit is now null and void and demanded a refund of my \$47 and if I don't receive a response from your office in 14 days I will take legal action in small claims court to recover my permit fees, court costs and any other related expenses.

Having not received a response from the CA DFG. On October 8th I filed form SC-100 Plaintiff's Claim and Order to Go to Small Claims Court listing myself as the plaintiff and Donald Koch, Director of Fish & Game in his official capacity as defendant claiming \$47 for my suction dredge permit and \$900 for a loss of gold due to my dredge season being cut short figuring I had another week in my dredge season.

When I went in to file the small claims lawsuit, the clerk told me I could not file this in Van Nuys because the defendant was in Sacramento and I would have to file in Sacramento. I responded, No, the Director of Fish & Game does business in all of California and I purchased the permit in Los Angeles County, so I was filing in Los Angeles County court. At that same time, they told me I could not sue Donald Koch as an individual, that I could sue the Department. I asked them to see the law stating this. They were unable to provide me with the law, so they accepted and filed the lawsuit.

On October 10th, 2 days later, I finally received a response from the Department of Fish & Game, it was not from Donald Koch, but the letter read that they received my letter and that SB 670 did not authorize refunds and they were not going to refund my money. My court date was set for December 14, 2009.

On October 30th, I received Form SC-105 Request for Court Order and Answer. The person making the request was Bradley A Solomon, Deputy Attorney General for the State of California asking that the case be dismissed as the plaintiff's had failed to plead exhaustion of his available administrative remedies, specifically plaintiff had failed to comply with the California Tort Claims Act. They also stated that the legislation did not provide for a refund and there were procedural defects in the Complaint as I had marked that I am not suing a public entity. They claim that Donald Koch in his official capacity is the same as a public entity. I then responded to the Court with the paperwork provided me SC-105 stating that the defendant in this case is Donald Koch it is not the Attorney general of California and that this was not a tort claim that I had paid for services that I did not receive and that I demand my day in court. I sent that on 11/5/2009.

On 12/11/09, Friday before my court date, I received a Minute Order and Clerk's Notice of Ruling from the LA Superior Court informing me that Court was convened at 8:30 am on 12/9/2009 in Department 108, Honorable Judge Gregg Marcus presiding, stating that the Court rules that my case had been dismissed without prejudice per court order giving no reason for dismissal and not allowing me to argue my case. Being very suspicious of this I showed up for my original court date, Monday, December 14th, to find that my case was not on the docket. I went to the clerk's office and they confirmed that my case was dismissed in closed chambers without anyone appearing. I asked the clerk's office for the law that allows a judge to dismiss a case without me being heard. She could not provide that. I told them at this time that I felt my right to due process had been violated, that they needed to show me the law. I then wrote a letter to Judge Marcus, who had dismissed my case, telling him the story from the beginning and stated that I was never notified that my case was to be heard in chambers or that the date had changed and that I believed at the very least my right to due process had been violated and at the worst there was a conspiracy to prevent my case from being heard. I requested the judge to indicate the specific law that would allow a case to be dismissed in chambers without notification. I again stated that my rights to due process had been violated. I requested the specific law and reasoning that his dismissal was based upon. I asked him to cite the specific law that stated that I could not sue Donald Koch as individual in this matter. I also stated that if the case was dismissed due to a problem with the filing to state the law upon which his decision was based. I requested a response within 30 days from the date of the letter and cc'd the letter to the original judge on the case, Fran Pavley my state senator and Brad Blumenfeld my state assemblyman.

Then on or around the 14th of January I received another Minute Order and Clerk's Notice of Ruling telling me that once again court had convened again at 8:30 am in Department 108 without me being present with the motion granted was to vacate dismissal of 12/9/09 set for oral argument on defendant's motion both side to be present on 2/3/2010 at 10:00 am in department 108, Van Nuys, California listing me as the plaintiff, Donald Koch Director of Department of Fish & Game and Bradley H Solomon Deputy Attorney General as defendants. Once again I wrote a letter to Gregg Marcus stating that I received the letter notifying me of my new court date stating again that I did not sue the Assistant Attorney General and could only assume that he was going to be there to defend Donald Koch. I expressed my concern that as far as my knowledge goes, legal representation is not allowed in small claims court. I stated again that my right of due process had already been violated when the court previously dismissed my case without me being present and I asked the court to deny the representation of the assistant attorney general to aid Mr. Koch and to see that I'm fairly heard on the issue between Mr. Koch and myself.

On February 3, 2010 I appeared in court. Donald Koch was not present. Instead Terry Dickerson from the CA DFG appeared in place of Donald Koch. At the beginning of the hearing I stated to the judge that the defendant Donald Koch is not

Legal Fund raffle June 17

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FEATURE STORY

here and request that the judge rule in my favor due to the defendant not showing up. He did not respond to my request, I also requested the judge to ask Ms. Dickerson if she had a license to practice law. At that time the judge stated that this was irrelevant and I replied to the judge saying your honor on Form SC100, information handed out by the court house, you may talk to a lawyer before or after the case, but you may not have one represent you in court unless this is an appeal from a small claims case. The judge then asked T. Dickerson if she was an attorney. She replied, no, she was a biologist. The judge asked if I was satisfied, and I said yes. However, I was not satisfied to continue with the proceeding because she cannot represent Donald Koch in small claims court. The judge then asked me to plead my case, so I went through the order of events once again and I presented to the judge as evidence a letter from the CADFG stating Notice of Refund 2009-2010 Commercial Fishing Salmon Fees upon closure of the salmon fishing season. The judge stated to me that salmon fishing and suction dredging are two separate things. I stated, you're right your honor, they are. I as a mineral estate owner have been granted rights under federal law and salmon fishermen do not have the same rights as I do. Therefore, I'm even more entitled to my permit fees and I stated to the judge that the State of California does not authorize mining, they only regulate, reasonably. At that time, he asked the defendant if she had a sworn affidavit from Donald Koch giving her authority to represent him in court. She stated, she did not. He asked her if she had a copy of SB670 stating that dredge permit fees were not approved for refund. She stated, she did not. He asked her if she had studied the law and if she could cite any of it. She responded, no. The judge then asked me to produce records to prove my loss of revenue from the dredge season. I did not provide the court with that record. Upon that he stated that he finds for the plaintiff in the amount of \$47, case dismissed.

After leaving the courtroom and speaking with Gerald Hobbs, pres of PLP, I should have asked for court costs and any fees related to that. But in the heat of the moment, I forgot.

Driving home from the courthouse, I thought to myself, WOW, I wonder what would happen if 50, 100, 300 or maybe 3,000 miners who purchased dredge permits asserted their rights and followed the same path. Would the DFG then do what is right and refund permit fees? Or would they spend more time and money defending multiple lawsuits in small claims court.

Let me just say, that what one person can do, another person can do!

Suction Dredge Permit Holders !!

Aanestad Legislation Requests Fairness for Suction Dredge Miners

SACRAMENTO: [Senator Sam Aanestad](#) (*R-Grass Valley*) has introduced new legislation that provides financial relief for the suction dredge mining industry in California. Senator Aanestad agreed to author [SB 233](#) following the successful passage of legislation earlier this year that placed a permanent ban on the practice of Suction Dredge Mining in California. Specifically, the Aanestad legislation will allow miners to request a refund of all suction dredge mining permits that were purchased from the [California Department of Fish and Game](#) (DFG) in 2009. Senator Aanestad says his legislation is a matter of fairness. "Thousands of miners in California followed the letter of the law by purchasing permits in 2009 that would allow them to practice suction dredge mining," said Senator Aanestad. "They are not to blame for legislative action earlier this year that essentially pulled the rug out from underneath their industry. They paid for a full year of mining activities. They didn't get it. They deserve a full refund." According to statistics from the DFG website, nearly 4,000 suction dredge mining permits were purchased in 2009. More than 3,000 of the permits were purchased by California residents alone. The cost of a permit for California residents is \$47.50,

and for out of state miners the permit fee is \$186.75. **In 2009, the Department collected about \$250,000 from miners who were subsequently denied the right to mine.** Senator Aanestad, who led the opposition against the passage of legislation that banned the practice of suction dredge mining, believes a full refund is the least that the State of California can do. "If I could convince the State Legislature to issue an engraved apology for wiping out an entire industry, believe me, I'd do it," said Senator Aanestad. "The economic impacts of the ban are already hitting home in my Northern California district. Miners aren't mining. They're not renting motel rooms. They're not renting equipment. They're not paying taxes or fees that would benefit the state's bottom line." The Aanestad legislation, sponsored by the [New 49ers Prospecting Association, Inc.](#), will be heard in committee when the State Legislature reconvenes for regular session in January. "We very much appreciate the Senator's efforts on this matter and his enthusiastic and unwavering support for not just our industry but all small business concerns," said New 49ers General Manager Dave McCracken. "While we don't agree with the decision to ban suction dredge mining, we are complying with the law. We just feel it's only fair to refund the fees that thousands of miners paid earlier this year."

This is a reprint from Senator Sam Aanestad's website.

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Why Join The PLP?

Where do you think you would be today had there been no one out there fighting for your rights? If you and I don't care enough to make the case for our rights, who will? Public Lands for the People has been working tirelessly for 19 years with land managers, politicians and other user groups to ensure that you get to use public lands where and when you want. We have had many successes and you have benefited. We can promise you the other side is always making the case that mining and prospecting is noisy, polluting, and the source of conflicts. They want us in smaller and smaller areas with fewer opportunities to access the public lands and backcountry. Ultimately, they want us off public lands altogether. This is your fight whether you like it or not. Doesn't it make sense to join and support others who are taking their time and money to protect your rights and opportunities? There is plenty you can do with \$35.00 other than join another organization. You could buy a couple gallons of gas, a drink, and a bag of popcorn at a movie or simply save it for that proverbial rainy day that Mom said would eventually come. However, if you value the preservation of your rights of the public to access, use, and enjoy our public lands, and you want to protect that right for yourself, family, friends, and future generations, you want to reconsider where that \$35.00 would be best put to use. You could do all of those things or none of them; it is your choice because it is your 35 bucks. Doesn't it make sense to equip those who are fighting for you with the resources needed for them to have a chance at success? Doesn't it make sense for you to invest \$35 in the Public Lands for the People?

Yes, it really does !!



WHO IS PLP?

PLP was constructed for the purpose of representing all outdoor user groups and individuals that are interested in keeping public and private lands open to prospecting, mining, and outdoor recreation on a non-discriminatory basis! PLP assists groups to join forces to maintain the laws and rights of all citizens on public and private lands (Federal, State and City). PLP will assist with representation at public hearings of government agencies that are proposing limitations and restrictions on the lands that belong to the people.

PLP DOES LITIGATE! We will file injunctions, when necessary, to prevent governmental agencies from discussing public issues behind closed doors and calling them "personnel meetings".

We will come to the aid of, and give individual attention to, persons or groups who are being harassed, intimidated or misled by people in authority (in or out of uniform) who are attempting to enforce their own ideas or opinions of laws, rules or regulations, rather than the actual laws, rules or regulations, and what it actually means.

Remember....

PUBLIC LANDS FOR THE PEOPLE

means....

Our **right** to Use Public Lands,
Not to Abuse Public Lands.

What does PLP do for you?

1. PLP is pursuing a lawsuit charging California for illegally passing a bill (SB670) into law prohibiting suction dredge mining.
 2. PLP filed a lawsuit against Eldorado National Forest for their illegal closures of over 2200 miles of roads in their Travel Management Plan (TMP). PLP is also making comments in several other forests on their TMP.
 3. PLP is in court fighting the California Department of Fish and Game who has violated a Court order by failing to do an Environmental Impact Report (EIR) on suction dredging in California.
 4. PLP assists on many individual issues that concern small-scale miners.
 5. PLP assists miners in other states, and those-state representatives.
 6. PLP makes formal comments on the Federal Register (FR) for the US Forest Service (USFS) road closures, trying to cite miners criminally, & rule making changes.
 7. PLP assists miner filing "takings" case against BLM for taking house & claims. BLM donated away leaving miner as legal owner/claimant & taxpayer w/o due process or compensation. Miner prevailed
 8. PLP and the miners prevailed in Siskiyou Regional Education Project (SREP) vs. U.S. Forest Service when the USFS attempted to force dredgers into a Plan of Operation.
 9. PLP was a party to 2 lawsuits in the Center for Biological Diversity (CBD), vs. USFS and CBD vs. the BLM. PLP and the miners prevailed
 10. PLP and Dee Stapp prevailed in a lawsuit against the BLM on separating bond issues of occupancy and casual use mining operations.
 11. PLP participated in the Washington, Oregon, and California Water Resources Board study on turbidity and mercury as a method to stop suction dredging and similar issues there.
 12. PLP assisted with Washington State Resources Coalition and others in the rule making process on suction dredging.
 13. Made legal & scientific comments & was instrumental in defeat of CA Bill AB 1032.
- PLP strives to be involved with issues that affect the small-scale mining community. We would not be able to continue these battles without the past support of its membership.

Your continued support, membership & donations is how we will continue into the future.

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Attend USFS, BLM and DFG Meetings & Hearings.... Research Activities....Legal research or composition

Signature _____ Date _____

MAIL TO

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3700 Santa Carlotta
La Crescent, Ca. 91214

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While pursuing your outdoor endeavor of work, play, recreation or sport and you are challenged by a representative of a governmental Agency or Public Servant, regarding the legality of your activity in their area, you should **DO THE FOLLOWING:**

1. It is wise to politely ask if you are breaking any laws. If you are informed that you are breaking, then ask for an explanation of the law and any municipal code that pertain to the law.
2. You should do as you are asked by the government representative, then ask for their name, badge number, position and the agency and district the represent. Record this information along with the date, time and the location of the area you are in.
3. If you have a pleasant response from any of the agents, such as being informative, cooperative or helpful, we would like to hear about them.
4. Give this information to your local PLP office or representative and he or she will advise you of the appropriate procedure to follow.

...Preserving Public Land Use for the People...

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