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Mining District (short) Legal Authorities and Analysis[SM]©

For purposes of brevity, this short discussion on the legal authority and analysis of the United States Mining Districts will not encompass the history and failure of the lease system in favor of the very successful location system presently reflected in the U. S. Mining Law (codified at 30 U.S.C. §§ 21a –54). Individuals are encouraged to read: "The Mining Law of 1872: A Legal and Historical Analysis", published originally by the National Legal Center for the Public Interest available in the Library of Congress. Republication was granted to Joe Martori, founder of the Minerals & Mining Advisory Council® and is presently available through: www.mmacusa.org

One of the earliest United States Supreme Court decisions discussing the legal authorities and the Congressional recognition of the Mining Districts under the U.S. Mining law was *St. Louis Smelting Co. v. Kemp, 104 U.S. 636 (1881)* where the court stated: *"The rules and regulations originally established in California have in their general features been adopted throughout all the mining regions of the United States. They were so wisely framed and were so just and fair in their operation that they have not to any great extent been interfered with by legislation, either state or national. In the first mining statute, passed July 9, 1866, they received the recognition and sanction of Congress, as they had previously the legislative and judicial approval of the States and Territories in which mines of gold and silver were found."*

The legal definition of a Mining District was recognized in *U.S. v. Smith, 11 F. 487 (1882)*, *"The phrase 'mining district' is well known, and means a section of country usually designated by name and described or understood as being confined within certain natural boundaries, in which gold or silver or both are found in paying quantities, and which is worked therefor, under rules and regulations prescribed by the miners therein, as the White Pine, the Humbolt, etc. This term, and the thing signified by it, are also recognized by the United States Statutes. Sections 2319, 2324, Rev. St.; Copp, U.S. Min. Lands, 471. There is no method of proceeding known to the law by which a district of country can be prospected, surveyed, and established, or declared to be a 'mineral district.' The ordinary surveys of the public lands do not include any examination or exploration of them for mineral deposits, the surveyor being only required 'to note in his field book the true situation of all mines, salt licks, salt springs, and mill-sites which come to his knowledge.' Sub. 7, Sec. 2395, Rev. St."*

Later in *Del Monte Mining & Milling Co v. Last Chance Mining & Milling Co, 171 U.S. 55* (1898). The court discussed that before the 1866 lode law and before the more refined 1872 Mining law *"that there was no general legislation on the part of congress, the fact of explorers searching the public domain for mines, and their possessory rights to the mines by them discovered, was generally recognized, and the rules and customs of miners in any particular district were enforced as valid. As said by this court in Sparrow v. Stron, 3 Wall. 97, 104: 'We know, also, that the territorial legislature has recognized by statute the validity and binding force of the rules, regulations, and customs of the mining districts. And we cannot shut our eyes to the public history, which informs us that under this legislation, and not only without interference by the national government, but under its implied sanction, vast mining interests have grown up employing many millions of capital, and contributing largely to the prosperity and improvement of the whole country.' See, also, Forbes v. Gracey, 94 U. S. 762; Jennison v. Kirk, 98 U. S. 453-459; Broder v. Water Co., 101 U. S. 274-276; Manuel v. Wulff, 152 U. S. 505-510, 14 Sup. Ct. 651; Black v. Mining Co., 163 U. S. 445, 449, 16 Sup. Ct. 1101."*

The court went on and stated: *"The Act of 1866 was, however, as we have said, the first general legislation in respect to the disposal of mines. The first section provided: 'That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States."* (Emphasis added.)

In analysis of the last sentence, "…and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States" reflects the Mining District authority to make rules and regulations that shall not be in conflict with Congressional enactments of law. Of importance is the fact Congress does not command that the rules and regulations from the Mining District or the power that they exercise be *consistent with* other federal agency regulations. Although, like the power of the Mining Districts to issue rules and regulations to carry out their authority granted or mandated by Congress, no agency or the like, shall make regulations in contradiction to the clear intent and language of Congress and shall not be entitled to deference by the courts. See: *Chevron v. Natural Defense Council, 467 U.S. 837 (1984)*.

Mining Districts are the private regulatory authority granted by Congress recognized to regulate the mineral lands held by the United States and for the disposal to citizens of the United States, by means of development and potentially perfected by patent. Among other priorities, the Dept. of Interior since its inception in 1789 has always concurrently had a role in managing the mineral estates of the United States. See: *Best v. Humboldt, 371 U.S. 334 (1963)* "*The Department of Interior has plenary authority over administration of public lands, including mineral lands, and it has broad authority to issue regulations concerning them. 5 U.S.C.A. § 485; 30 U.S.C.A. § 22; 43 U.S.C.A. §§ 2, 1201."* While the Dept. of Interior may have plenary authority over the administration of public lands, including mineral lands, that authority is not exclusive. See: *U.S. v. Backlund, 2014 WL 5033202 (C.A. 9 (Or))* *"…Congress granted the Forest Service broad authority to regulate access to mining claims on National Forest Service lands."), cert. denied, 133 S.Ct. 1464 (2013); United States v. Richardson, 599 F.2d 290, 295 (9th Cir.1979) (upholding the Department of Agriculture's authority to regulate unpatented mining in national forests)".*

In 1955 under the Multiple Surface Use Act codified at 30 U.S.C. § 612(b), Congress directed that: "*Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto…"*

No mention is made to Mining Districts in the above enactment. Prior to 1955, mineral deposits were legally described in relation to Mining Districts (*U.S. v. Smith, supra)*. To this author's knowledge, no court has ruled on the subject addressing "…(*except mineral deposits subject to location under the mining laws of the United States)* …" statement within the 1955 Act itself. Instead, the courts have interpreted this section of the 1955 Act in terms of undue material interference by the public or the surface management agency itself. This was best illustrated in the Shoemaker case (110 IBLA 39) in 1989 where the court said: *"Federal management must yield to mining as the dominant and primary use. The terms 'endanger' and 'materially interfere' used in subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a mining claimant. Where there*

is no evidence that such action endangers the claimant's operations, the question is whether the surface management activity will substantially hinder, impede, or clash with mining operations or a reasonably related use. Like 'other surface resources,' the terms 'endanger' and 'materially interfere' are general. Although the terms are not precise, the legislative history is clear as to their intended effect. In reference to the portion of the statute containing the terms, the House and Senate reports both state: This language, carefully developed, emphasizes the committee's insistence that this legislation not have the effect of modifying longstanding essential rights springing from location of a mining claim. Dominant and primary use of the locations hereafter made, as in the past, would be vested first in the locator; the United States would be authorized to manage and dispose of surface resources, or to use the surface for access to adjacent lands, so long as and to the extent that these activities do not endanger or materially interfere with mining, or related operations or activities on the mining claim. H.R.Rep. No. 730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474, 2483; S.Rep. No. 554, 84th Cong., 1st Sess. 8-9."

The court went on to say:
"The change made by the Surface Resources Act was to create in the United States explicit authority to manage and dispose of the vegetative surface resources and to manage other surface resources. 30 U.S.C. § 612(b) (1982). Previously, Governmental agencies had been unable to do so once a mining claim had been located, even though the locator had only a limited right to use the same resources. See Bruce W. Crawford, supra at 365-66, 92 I.D. at 216-17. Congress recognized that there would be instances in which Federal management of the surface resources found on a mining claim would conflict with legitimate use of the surface and surface resources by the claimant. The balance it struck in order to resolve such conflicts was to specify that the authority the statute granted would apply only so long as and to the extent that Federal use of the surface did not endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto. 30 U.S.C. § 612(b) (1982); see United States v. Curtis-Nevada Mines, Inc., 611 F.2d at 1283, 1285. When it does, Federal surface management activities must yield to mining as the dominant and primary use, the mineral locator having a first and full right to use the surface and surface resources." See also *U.S.v.Lex,300 F.Supp.2d951(2003)*: *"As a result of the Multiple Use Act, owners of unpatented mining claims must comply with government regulation of the surface of their claims, so long as that regulation does not materially interfere with prospecting or mining operations."*

The original documented rules, regulations and customs of miners (local rules and regulation bylaws) in their respective Mining Districts were also federally recognized in the United States Census in 1880 and is available online at the mmacusa.org website by clicking on "Mining Districts", then clicking on "Mining Laws 1880 Census" in order to download the documents. These local bylaws are actively being undated to be consistent with existing Congressional enactments within each local Mining District.

In summary, it is this authors opinion that although mining claimants have the legal authority to issue rules and regulations in the context of organized traditional Mining Districts, many miners insist that in the 21st Century all they wish to perform is customary arbitration (through a elected local Mining District board) to determine the reasonable applicability of today's agency regulations that have been misapplied or applied in an onerous fashion that unduly materially interfere. The net benefit of having the miners role clarified in modern times through legislation will save the federal government and the private sector millions of dollars annually in litigation costs and delays, provide regulatory predictability that encourages investments domestically, enable a reliable source of domestically mined rare earth minerals and metals for military needs as well as economic security needs, and provide good paying jobs while still protecting the environment.

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