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Official Record

Recording requested By
BRONCO CREEK EXPLORATION

Eureka County - NV

Mike Rebaleati - Recorder

Fee: \$18.00

Page 1 of 5

RPTT:

Recorded By: FES

Book- 516 Page- 0291

Eureka County Recorder
10 South Main Street
Eureka, NV 89316

June 2, 2011



Dear Sir or Madam,

This letter is to notify you that as a result of the decision on Case No. 11 OC 00160 at the First Judicial District Court of the State of Nevada In and For Carson City of BL Exploration, LLC, Desert Pacific Exploration, Inc., Arthur R. Leger, MGC Resources, Inc., Redstar Gold USA Inc., and Western Exploration, Inc. vs. the State of Nevada, we have stopped payment on check #1812 in the amount of \$19,654.00 accepted and recorded on Tuesday, May 31st, 2011.

I've enclose a copy of the ruling on the case which states that "the NRS 517.187 tax is not authorized by Article 10, Section 5, therefore, it is plainly prohibited by Article 10, Section 1 NRS 517.187 is unconstitutional and therefore void."

We recognize that in addition to the Mining Claim fee submitted of \$85 per claim for a total of 231 claims held by our wholly-owned subsidiary Basin and Range Resources, LLC totaling \$19,635.00 there was a \$19 recording fee. As such, please accept payment of \$19 for the original document recordation as well as \$19 for the recording of this document for a total of \$38.00.

If you have any questions or concerns, please feel free to contact us at (520) 624-4153.

Best Regards,

Chelsea Kreiner
Land & Permitting Manager
ckreiner@broncocreek.com
(520) 624-4153

REC'D & FILED

2011 MAY 31 AM 8:24

ALAN GLOVER

BY *[Signature]* DEPT

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

BL EXPLORATION, LLC, a Nevada
corporation, DESERT PACIFIC
EXPLORATION, INC., a Nevada
corporation, ARTHUR R. LEGER, a
Nevada Resident, MGC
RESOURCES, INC., a Nevada
corporation, REDSTAR GOLD USA
INC., a Nevada corporation,
WESTERN EXPLORATION, INC., a
Nevada corporation,

CASE NO. 11 OC 00160

DEPT. 2

DECLARATORY JUDGMENT

Plaintiffs,

vs.

State of Nevada ex. rel. Legislature
of the State of Nevada, KIM R.
WALLIN, in her capacity as the
Nevada State controller; and DOE
DEFENDANTS 1-10 inclusive,

Defendants.

INTRODUCTION

This case involves a constitutional challenge to NRS 517.187. NRS 517.187
imposes a tax¹ upon the holders of 11 or more mining claims.² The plaintiffs

¹During argument at the hearing the State agreed NRS 517.187 imposes a tax.

²"Mining claim" means a possessory interest in mineral lands upon the public domain in which a miner does not have title, but rather a vested and exclusive right of possession for the purpose of extracting precious metals. *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 335-336 (1963); *Forbes v. Gracey*, 94 U.S. 762, 766-767 (1877); *Mt. Diablo Mill, Co. v. Callison*, 17 F. Cas. 918, 924 (Cir. Ct. D. Nev. 1879) (No. 9,886). In contrast, a "patented mining claim" is one in which the miner has obtained fee title from the federal government to a mining claim upon public land.



1 contend the NRS 517.187 tax violates the Nevada Constitution, Article 10,
2 Sections 1 and 5. Under Article 10, Sections 1 and 5, the State may only tax
3 mining claims on net proceeds of minerals extracted. The State contends Article
4 10, Sections 1 and 5, do not prevent the State from taxing holders of mining
5 claims based upon the number of mining claims they hold. I agree with the
6 plaintiffs that NRS 517.187 taxes mining claims and violates Article 10, Sections
7 1 and 5 of the Nevada Constitution.

8 9 **PROCEDURAL HISTORY**

10 The plaintiffs filed a Complaint for Declaratory Judgment and Injunctive
11 Relief, and a Motion for Temporary Restraining Order and Preliminary
12 Injunction. The action names the Nevada Legislature and State Controller Kim
13 Wallin as defendants (the State). Claremont Nevada Mines LLC moved to file
14 an amicus curiae brief. The parties stipulated to the granting of that motion and
15 the court so ordered. The court held a hearing on May 27, 2011. Laura K.
16 Granier, Esq. and Courtney Miller O'Mara, Esq. appeared on behalf of
17 plaintiffs, and Kevin C. Powers, Esq. and Marta A. Adams, Esq. appeared for the
18 State. Thomas P. Erwin, Esq. appeared as amicus curiae. The parties stipulated
19 to the hearing being the trial on the merits.

20 21 **FACTUAL BACKGROUND**

22 Each year holders of mining claims must record an affidavit to preserve
23 their right to hold their mining claims.³ The affidavit describes labor performed
24 or improvements made as required by law for a mining claim; or when labor or
25

26 *Freese v. United States*, 639 F.2d 754, 755-757 (Ct. Cl. 1981), *cert. denied*, 454 U.S.
27 827 (1981); *United States v. Springer*, 491 F.2d 239, 242-243 (9th Cir. 1974), *cert.*
28 *denied*, 419 U.S. 834 (1974); *Roberts v. Morton*, 389 F.Supp. 87, 90 (D. Colo. 1975),
aff'd 549 F.2d 158 (10th Cir. 1976), *cert. denied*, 434 U.S. 834 (1977). See also, 86-9
Op. Att'y Gen. (1986). NRS 517.187 applies only to mining claims.

³NRS 517.230.

1 improvements are not required the affidavit indicates the holder intends to hold
2 the claim.⁴ All mining claim holders pay a fee to have each affidavit recorded.⁵
3 Under NRS 517.187 holders of 11 or more mining claims must pay a tax based
4 upon the number of claims they hold.

6 DISCUSSION

7 The State argues Article 10, Sections 1 and 5, only prohibit the Legislature
8 from doing two things: 1) imposing an ad valorem property tax; and 2)
9 imposing a tax rate higher than five percent on the net proceeds of minerals
10 extracted. The State argues this is the extent of the Constitutional prohibitions
11 regarding taxing mining claims, and the Legislature is free to tax the holders of
12 mining claims so long as the tax is not an ad valorem property tax or a tax upon
13 minerals or its proceeds.⁶ Therefore, the State argues, the only issue is whether
14 the NRS 517.187 tax is an ad valorem property tax or a tax upon minerals or
15 their proceeds. The State misinterprets Article 10, Sections 1 and 5.

16 The Nevada Constitution, Article 10, Section 1(1), provides that "mining
17 claims ...*shall* be assessed and taxed *only* as provided in Section 5...."
18 (Emphasis added.) Section 5(1) authorizes a tax upon the net proceeds of
19 minerals extracted. Section 5 does not authorize any other tax upon mining
20 claims. Therefore, Article 10, Sections 1 and 5, prohibit any tax upon mining
21 claims other than a tax of five percent or less upon the net proceeds of extracted
22 minerals.

23 The other issues raised by the State lack merit. Because the court finds NRS
24 517.187 unconstitutional the remaining issues raised by the plaintiffs are moot.

27 ⁴Id.
28

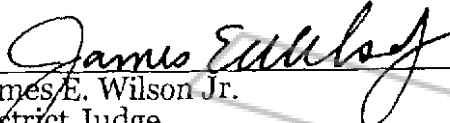
⁵NRS 517.185.

⁶Def.'s Opp'n to Pl.'s Mot. for T.R.O. and Prelim. Inj., p. 18; and oral argument.



1 IT IS ADJUDGED: The NRS 517.187 tax on holders of 11 or more mining
2 claims, is a tax on mining claims. The tax is not authorized by Article 10,
3 Section 5, therefore, it is plainly prohibited by Article 10, Section 1. NRS 517.187
4 is unconstitutional and therefore void.

5 May 31, 2011

6 
7 James E. Wilson Jr.
8 District Judge

9
10
11 **CERTIFICATE OF SERVICE**

12 Pursuant to NRCP 5(b), I certify that I am an employee of The Honorable
13 James E. Wilson, and I certify that on this 31 day of May, 2011, I faxed,
14 handed to or deposited for mailing at Carson City, Nevada, or caused to be
15 delivered by messenger service, a true and correct copy of the foregoing order
16 and addressed to the following:

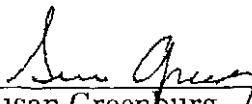
17 Laura K. Granier, Esq.
18 Courtney Miller o'mara
19 1100 Bank of America Plaza
20 50 West Liberty St.
21 Reno, NV 89501

22 Fax: 788-8682

23 Thomas P. Erwin, Esq.
24 One E. Liberty Street, #424
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Marta Adams, Esq.
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27 
28 Susan Greenburg
Judicial Assistant

