Executive Summary
The Mining Law: The Extent of Federal Authority Over Public Domain

Because of a dangerous, imminent protective reflex by Mineral Estate Grantees in the county responding to an unjust loss of property rights and livelihood without adequate remedy, in relief of the same, we met in February with Josephine County sheriff Gil Gilbertson. From that meeting we have been asked by sheriff Gilbertson to prepare the foundation of the mining law as regards federal agency Authority specific to Mining Property, Roads and Trails, and how agency activity relates to lawful agency authority. Currently, public land management agents purport their authority is omnipotent and omnipresent. The sheriff posed to us the important first question. In the context of regulating public domain or as it affects Locateable mineral deposit property, and ingress and egress generally, highways, What is the extent of federal agency authority? The paragraph below serves to answer that question:

Where both the Forest Service and the BLM are required to adhere the congressional public land management man date of the Federal Land Management Policy Act, FLPMA, which expressly states at 43 USC 1732 (b), that, ". . . ***no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress"*** any assertion of federal authority by agency, such as the BLM or the Forest Service, impairing, obstructing or closing access against, or managing the surface of Locatable mineral deposit property on public domain in-holding the public land, or otherwise interfering in any way is committed contrary to the laws of the United States of America, a breach of fiduciary duty, and an intentional and negligent trust tort.

For the widening audience, we would like to recap the most very important disclosures made during the February meeting with the Sheriff supporting the answer above. The distinction between "public land" and "public domain". The distinction between just "any mining claim" and those "mineral deposit" claims. And lastly, the distinction between the uncommon minerals disposed of by the grants culminating in act of 1872, and the common mineral materials variety sold or leased under separate statutes. These distinctions must be made to properly apprehend mining law and to avoid confusion.

The distinction between "public land" and "public domain"

Any interpretation of mining law requires that it be read "*para materia*", interpreted all together. The definition given to distinguish the difference between "public land" and "public domain", citing the Congressional Record of October 2000, page 1885-1866, states, "2. The true nature of ''public lands.'' ''Public Lands'' are ''lands open to sale or other dispositions under general laws, lands to which no claim or rights of others have attached.'' "The United States Supreme Court has stated: It is well settled that all land to which any claim or rights of others has attached does not fall within the designation of public lands.'' In additional support we add from the same record, "The courts have repeatedly held that when a lawful possession of the public lands has been taken, these lands are no longer available to the public and are therefore no longer public lands. Possession of the mineral estate in public lands could be lawfully taken under the mining acts. Where valid mining claims exist, that land is no longer public land." The "public land" that is disposed by claims under the act of 1872 is public domain as stated in that Act, reference "USC 30 § 26. Locators' rights of possession and enjoyment: The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain. . ."

The "public land" has many potential uses, until disposed. The FLPMA, conveniently recognizes two general Uses, "Specific Use" and "Special Use". A valuable mineral deposit location is a specific use on public domain, not a special use of "public land" such as is regulated by 43 CFR 3809. Reference the Act of May 10, 1872, amending the Act of 1870 and the 1866 mining law clause 1, after "granting" or 30 USC 22, locatable minerals are not mining claims on "public land" but mineral deposits, 30 USC 22, on public domain, 30 USC 26.

30 USC § 22. Lands open to purchase by citizens
Except as otherwise provided, **all valuable mineral deposits** in lands belonging to the United States, both surveyed and unsurveyed, **shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase**, by citizens of the United States and those who have declared their intention to become such, *under regulations prescribed by law*, **and** *according to the local customs or rules of miners* in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States. -R.S. Sec. 2319 **derived from act May 10, 1872,** ch. 152, Sec. 1, 17 Stat. 91.

USC 30 § 26. Locators' rights of possession and enjoyment

The locators of all mining locations made on any mineral vein, lode, or ledge, **situated on the public domain,** their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they *comply with the laws of the United States,* and with State, territorial, ***and*** *local regulations* not in conflict with the laws of the United States *governing their possessory title*, **shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations**,

-R.S. § 2322 derived from act May 10, 1872, ch. 152, § 3, 17 Stat. 91.

The mechanics of what happens to the "public land" once found to be mineral in character is expressly evidenced in the Organic Act of 1897, that "*any public lands embraced within the limits of any forest reservation which. . . .*" "*...shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain.*" By private settlement under various land disposal laws of the United States, such as the Mining Law of 1872, "public land" is restored to the public domain. The federal agencies have management authority only over " public land", not privately settled public domain. The act of location, restores the land to public domain and the minin g law provides the locator of such segregation "**shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations**,
-R.S. ℣ 2322 derived from act May 10, 1872, ch. 152, ℣ 3, 17 Stat. 91."

Federal mining claims are "private property"
Freese v. United States, 639 F.2d 754, 757, 226 Ct.Cl. 252 cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed.2d 10 3 (1981); Oil Shale Corp. v. Morton, 370 F. Supp. 108, 124 (D.Colo. 1973).

"but so long as he complies with the provisions of the mining laws **his possessory right, for all practical purposes of ownership, is as good as though secured by patent.**"
Wilbur v. U.S. ex rel. Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

In complete concurrence, the Congressional Record of October 23, 2000, states, "*Federal rules and regulations cannot extinguish property which derives from state law*". State law acknowledges at "ORS **517.080 Mining claims as realty.** ***All mining claims, whether quartz or placer, are real estate****. The owner of the possessory right thereto has a legal estate therein within the meaning of ORS 105.005*".

Mineral deposit claims and the property thereon and livelihood therefrom may not be tampered with, or denied protection of government which property and livelihood shall not suffer impairment or interference. Setting the required boundaries of a mining claim literally sets a boundary describing land separate and distinct from agency authority placing the claim under the exclusive authority and jurisdiction of the locator. And this interest is stated, as case law and Forest Service Manual details, at: FSM 2813 - RIGHTS AND OBLIGATIONS OF CLAIMANTS; 2813.1 - Rights of Claimants

By location and entry, ***in compliance with the 1872 act****,* ***a claimant acquires certain rights against other citizens and against the United States*** (FSM 2811).

By clear and identical language, Congress has stated in the Organic Act of June 4, 1897, the Eastern Forests (Week's) Act of 1911, and the Taylor Grazing Act of 1934, that there was no intention to retain federal jurisdiction over private interests within national forests. The courts have consistently upheld the ruling in *Kansas* v. *Colorado* since 1907.

The rights the locator maintains exclusive possession even against the government, including all agencies, must be preserved, “saved”, in every land disposal act subsequent to the original granting act of 1866, including the FLPMA. Those rights include that the locator of a valuable mineral deposit, “**shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations.**” The courts declared possessory title in 1864 before the grant itself. This grant is exclusive conveying permanent, title, *as good as patent*, such that the title shall not be affected by the paramount or trust title of the United Stated, referencing 30 USC 53, that *“No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession”.* The existence of valid existing rights by relation back of the granting act of July 26, 1866 disposing the uncommon mineral estate held in trust are required to be “saved” in subsequent acts as a “specific use” of the public domain to the Locator. This mineral estate is treated like any other granted property, the contract of which a grantor in this case Congress, or by agency, treated as a mere proprietor may not breach.

It must be noted, referring to the italicized emphasis in both Section 22 and 26 above, that the former referencing “*regulations prescribed*” and the latter the “*the laws of the United States...”“**and** local regulations”* are only those laws and regulations relevant and *“governing their possessory title”.* This was a miner's law for miners. The only “regulation authority” retained by the federal government, was that oversight authority in dutifully disposing the soil pursuant to the various grants, to avoid such things as fraudulent public land entry, not to regulate the uses thereby those disposal acts.

Despite current Agency rhetoric to the contrary, and fraudulently so, the FLPMA contains many savings provision eliminating agency authority over uncommon mineral deposits and other rights, such as ingress and egress, and water, or obligations, such as livelihood. Those are as found referencing the:

*Short Title Of 1988 Amendment “Federal Land Policy and Management Act of 1976'." **SAVINGS PROVISION** Section 701 of Pub. L. 94-579 provided that: "(a) **Nothing in this Act**, or in any amendment made by this Act [see Short Title note above], **shall be construed as terminating any** valid lease, permit, patent, right-of-way, or **other land use right or authorization existing** on the date of approval of this Act [Oct. 21, 1976” “"(f) **Nothing in this Act shall be deemed to repeal any existing law by implication.** "(g) **Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or** - "(1) **as affecting in any way any law governing appropriation** or use of, or Federal right to, water on public lands; "(2) **as expanding or diminishing Federal or State jurisdiction**, responsibility, interests, or rights in water resources development or control; ” “"(h) **All actions by the Secretary concerned under this Act shall be subject to valid existing rights.** ”*

Amplifying with particularity upon the previous list of withheld authorities under the FLPMA, 43 USC 1732, as found in annotation, the “**Section Referred To In Other Sections**” following Section 22 printed above, constraining agency authority further, consistent with the previously mentioned Savings Provisions of which all enforcement provisions such as 43 USC 1733 are subject, we find:

§ 1732. Management of use, occupancy, and development of public lands

(a) **Multiple use and sustained yield requirements applicable; exception**

“. . . . **except** that where a tract of such public land has been dedicated to **specific uses according to any other provisions of law it shall be managed in accordance with such law.**

(b) **Easements, permits, etc., for utilization through habitation, cultivation, and development of small trade or manufacturing concerns; applicable statutory requirements**

“In managing the public lands, **the Secretary shall, subject to** this Act and **other applicable law and under such terms and conditions as are consistent with such law . . .**”

". . . . **no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress."**

(c) **Revocation or suspension provision in instrument authorizing use, occupancy or development; viola tion of provision; procedure applicable**

". . . . **Provided further, That, where** other applicable law contains specific provisions for suspension, revoc ation, or cancellation of a permit, license, or **other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail**."

This clearly evidences no section of the FLPMA can amend or impair the rights of locators under the 1872 mining law. This is so even for Forest Service authority where, for example, purportedly criminal, citations issue under 36 CFR 261, implement 16 USC 551 the authority of which was 16 USC 471, repealed by FLPMA, redirected by 43 USC 1740, now authorizing 16 USC 1609, "Multiple Use", subject to FLPMA mandate 43 USC 1732 (b) stating that no section of the FLPMA and, therefore, no Forest Service authority may impair or amend locator's rights under the act of 1872. There is no federal agency authority in this context regarding Locateable deposits. Imposing authority is a trust breach.

The distinction between "mining claims" generally, and "mineral deposits" specifically.

In contradistinction to the possessory rights under the 1872 act for uncommon, such as gold, mineral deposit grant disposal, Common Mineral Materials, such as sand and gravel, were only first disposed of in 1947, and today as amended in 1955, the oft and erroneously relied "Surface Resources Act", are under the FLPMA and of continuing disposal or mineral management oversight and regulation by lease or sale contract. In other words, until 1947, unlike the granted uncommon minerals since 1864, common mineral materials were not available for disposal. Paying particular attention to the difference and distinction between "mining claims" generally under agency managed surface rights, and "mineral deposits" with exclusively or privately possessed surface rights, specifically reference:

30 § 612. Unpatented **mining claims**

(a) Prospecting, mining or processing operations

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

(b) Reservations in the United States to use of the surface and surface resources

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).**

Please note above, **any mining claim** not a valuable **mineral deposit** is likely a US owned mineral subject to surface servitude, treated as a split or severed estate, unlike the Locator of a valuable deposit who shall have exclusive or private possesssion and enjoyment, including the entire surface within the limits of the claim. Unlike Common entries, a locator by the act of 1872 enjoys a complete land estate.

Federal agencies are required to recognize the private "*as good as though secured by patent*" property rights and non-discretionary nature of locatable mining as being distinct from United States, U.S., owned mineral operations of leaseable or saleable contract of agency discretion.

The distinction between uncommon minerals disposed by grant and common mineral materials.

It must be remembered here that under the laws of the United States regarding mineral deposits, 30 USC 26, the locator of any valuable mineral deposit "**shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations**", and why the FLPMA or the 1947 Common Materials Act or its amending act of 1955, 30 USC 612, can not impair or interfere at all with such locator's right or property or obligations, such as livelihood. In other words, as long a mineral deposit locator holds pursuant to the act of 1872, any surface management authority delegated to the agencies shall not interfere nor impair a locator's rights under the 1872 act.

This exception for the UNCOMMON mineral deposits disposed of by the Acts culminating in the Act of May 10, 1872 represents that Congress keenly understood the need by cause of it's grantor obligation and Trustee relationship, that paramount title, to "save" or protect, in relation back honoring Congress' reciprocal obligation in the granting enactment, rights of the future locators of valid unpatented mineral deposit locations. Congress does this by placing a preservation clause in every subsequent property disposal legislation such as found at 30 USC Section 612 (b) "Any mining claim" "*(**except mineral deposits** subject to location under the mining laws of the United States)*". Another preserving exception is stated in Section 612 (c): "*Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of building or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, . . .*" Certainly this shows too, placing buildings on exclusively possessed in-holdings is a lawful use contrary to what the agencies currently, unlawfully, enforce. Any act by any federal agency causing any interference to the granted uncommon mineral deposits or rights appurtenant the locator is to come in to conflict with the laws of the United States.

"**Such an interest may be asserted against the United States as well as against third parties**" (see Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963); Gwillim v. Donnellan, 115 U.S. 45, 50 (1885)) "and may not be taken from the claimant by the United States without due compensation." See United States v. North American Transportation & Trading Co., 253 U.S. 330 (1920); cf. Best v. Humboldt Placer Mining Co., supra.

Moreover, it must be noted, at the time of the grant enactment for compliance with laws and regulations, i.e., 30 USC 22, "*under regulations prescribed by law*" and customs of the mining districts there were, other than the General Land Office, no agencies existing such that might today represent that the phrases "*under regulations prescribed by law*" "***and** local regulations*" provided for current agency management authority. Even so, any interference would still be contrary to the Federal Land Management Policy Act of 1976, FLPMA, prohibiting agency interference, impairment, or amendment to the rights of a mineral deposit Locator. The phrase in 30 USC 26 "so long as they *comply with the laws of the United States,* and with State, territorial, ***and** local regulations* not in conflict with the laws of the United States *governing their possessory title"*, shows any regulation could only be in regards of how a locator acquired or maintained possessory title or as recognized by the courts since 1864. Any suggestion that the FLPMA did amend the 1872 act would be a fraudulent representation. To suggest to would constitute an intentional tort in breach of the trust expressly established by the Act of 1866. The FLPMA, as a matter of law, shall save, preserve, this granted or "Locateable" mineral estate, appurtenant or contemporaneous rights, or obligations when appropriated.

Federal Authority Under Law In Contrast of Agency Current Practice.

Given that the Federal Land Management Policy Act of 1976 is the sole congressional act delegating and dictating to any federal agency how and to what extent federal trustees manage the public land held in Government trust, it can not be conceived and there is no other Act of Congress found describing any agency possession of "public land" or " public domain". The federal agencies have no actual title.

As a matter of law, even Congress is merely trustee of the public land trust. Therefore, subject to delegated authorization, any and all authority, or the lack thereof, will be found in this act. Because of Congress' trust obligation s there are certain authorities which, and because of Agency, must be withheld from all agencies to avoid a breach of trust of disposed lands. Federal agency has no power to interfere with disposed public domain. Savings provision s mandate the FLPMA can not be used or extended in such a way as to encroach in any way upon any disposed properties or rights. The only remaining authority is managing what of the "public land" is yet to be disposed, as the Constitution requires.

In trying to remove any and all continuing confusion the mining law seems to create, it was observed at the February meeting that a further confusion was how is it that a bunch of "dumb miners" could write the mining law with such highly educated language use as to render it so confusing? In historical fact, eliminating confusion was why miners threw attorneys out of their camps and courts. What, then, might there be in the language of the act which could cause anyone confusion? To break through this conundrum, the inquiry was made, from the Mining Law act, What about the phrase in the grant expressing that the locator "**shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations**" is so confounding as to render any one reading that part dumb-struck? And coupled with the knowledge that the singular delegation of authority to the federal agencies states that "***no provision of this section or any other section of this Act [FLPMA] shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress*"**, What is left to be understood causing confusion regarding whether a federal agency or State may interfere with a granted property? What about "exclusive possession" "of all the surface" is confusing?

Where, by Act of Congress, federal agency authority is withheld, by what authority does a "public land" management agent lawfully act to interfere or impair rights of a locators exclusively possessing public domain under the Act of 1872? The answer is, as previously shown, there is no lawful authority.

Sections 8 and 9 of the 1866 Act are the seminal U.S. law defining the rights of ownership.

We were asked by the sheriff to explain highways law. Section 8 of the act of July 26, 1866, commonly known as R.S. 2477 right-of ways, grants the establishment of ''highways'' across "public land": "*And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.*" The term "highways" as used in the 1866 Act refers to any road or trail used for travel. The right-of-ways created by this act were an absolute donation for the establishment of travel ways over unappropriated land and by whatever means recognized in law or under local rules and customs. The RS 2477 right-of-way grant is a property right. Therefore, it enjoys the same constitutional and legal protections as any other property. Lawfully, when the grant was made, the federal government's interest in the land underlying the right-of-way became the "subservient estate" and the interest of the right-of-way grantee became the "dominant estate". That means that the government can not interfere with the grantee's exercise of the right of travel as will be seen herein at *Gibson* v. *Chouteau,* 13 Wall. 92 (1872).

The Section 8 grant also conveyed a bundle of associated rights. These include the right to maintain the road and even to upgrade the road. The private yet common possession of the highways can be seen through a famous case of a county asserting rights to a highway, or as stated in the Congressional Record of 2000, "*the individual owners whose mines, ranches and other property are accessed by the road may have a compensable property right in the road. Federal rules and regulations cannot extinguish property which derives from state law. For the USFS to implement regulations under the Endangered Species Act, Clean Water Act or any other federal authority, which would divest citizens of their property is to trigger claims for compensation by the affected citizens. For the USFS to institute criminal action against Elko County for exercising its lawful jurisdiction over the road and the land adjacent to the Road is a usurpation of power upon which the US Supreme Court has long since conclusively ruled*". This is applicable also to the BLM.

To perfect the grant of the United States through Section 8 of the Act of July 26, 1866 to construct highways, Oregon enacted a law in 1901 accepting the grant of the highways, such that, ways existing without interference or protest for 10 years are public roads; Understanding the term "highway" meant a way of any character for the purpose of travel whether by any mode and need, whether designated trail, road, or way, or otherwise, the right to travel of which can not be extinguished by regulation:

This evidences that every constructed way that has existed in Oregon is declared in law a property right which all agencies are without authority to question. Moreover, Oregon statute requires that any change to those ways must be done by application to the county court. Reference SB 208 of 1901 Oregon Law, attached. See also ORS 368.00 1 Definitions, 368.021 County authority over trails, 368.056 Permit for gate construction on public road, 368.131 Right of way over United States public lands. The county governing body may by resolution accept the grant of right s of way for the construction of public roads over public lands of the United States. **This section does not invalidate the acceptance of such grant by general public use and enjoyment.** [Formerly 368.555]. That last sentence evidences the perpetual nature of the land donation dedication and right of the public to use the highway for travel as a matter of right. ORS "**801.305 "Highway."** (*1) "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.*"

Every way in Oregon created by authority of the grant of 1866 is a free and open ingress and egress possessed commonly by the public not the State, or the County, or the United States. The county may accept the obligation of maintenance. Any gate constructed on a public road requires county permission according to the purpose for which the road was constructed. There is no enforcement authority over mere use of the highways which are owned in common by the people. And no road may be altered or vacated without county court oversight, literally, alteration only by a delegated act of Congress.

Section 9 Water and Rights.

Water is no less granted or protected than the other granted properties of the land, minerals, highways, or other public domain. Constitutionally valid law "*forbids legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in transfer of the title after the initiation for its acquisition.*" Oregon law complied with this requirement in 1899 acknowledging Congressionally granted rights to water to the people, in pertinent part:

H.B. 362; ***Be it enacted by the legislative assembly of the state of Oregon :***

Section 1. That **the use of water** in the lakes and running streams of the state of Oregon for the purpose of **developing the mineral resources** of the state and to furnish electrical power for all purposes **is declared to be a public and beneficial use is hereby granted**.

Section 2. **All persons**, companies and corporations **having title or possessory right to any mineral or other land**, **shall be entitled to the use and enjoyments of the water** of any lake or running stream within the state for mining resources of the state or to furnish electrical power for any purposes; and such waters may be made available to the full extent of the capacity thereof **without regard to the deterioration in quality or diminution of quantity**, so that such use of the same does not materially affect the rights of prior appropriations.

Section 24. Inasmuch as this state contains large tracts of mineral lands which cannot be successfully work ed or the mineral extracted therefrom without the use of water, and the **working of said mining properties will largely increase the wealth of this state** ;

Approved February 18, 1899.

Federal jurisdiction in the States

The one remaining topic asked of us by sheriff Gilbertson was to discuss current agency activity as it relates to legitimate agency authority. As contrasted from what the authority management agencies purport is omnipotent and omnipresent, it will be found that federal agents acting outside of their lawful authority are not immune from state prosecution for abuses against property holders in-holding public land. From the **Jurisdiction Over Federal Areas Within The States,** Report of the Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, Part II, June 1957, Page 252, "We mean by this statement to say that Federal officers who are discharging their duties in a State and who are engaged as this appellee was engaged in superintending the internal government and management of a Federal institution, under the direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority." Page 253, "The government is but claiming that its own officers, when discharging duties under Federal authority pursuant to and by virtue of valid Federal laws, are not subject to arrest or other liability under the laws of the State in which their duties are performed." [7] "In addition to these source s of constitutional power of the Federal Government, which have consequent limitations on State authority, article IV, section 3, clause 2 [8], of the Constitution, vests in Congress certain authority with respect to any federally owned land which it alone may exercise without interference from any source."

[7] In the case In re Turner, 119 Fed. 231 (C.C.S.D. Iowa, 1902), it was held that an injunction could not issue to prevent a Federal officer from carrying out his official duties.
[8] This clause reads:
"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or any particular State."
The clause does not give the United States jurisdiction over its property within the United States, **such as public lands, in the legislative jurisdiction sense** of art. I, sec. 8, cl. 17. *Op. Sol., Dept. of Agriculture*, No. 10906-10910 (May 6, 1924); *Pollard v. Hagan*, 3 How. 212 (1845).

Page 274, *Gibson* v. *Chouteau,* 13 Wall. 92 (1872) "The same principle which forbids any State legislation interferin g with the power of Congress to dispose of the public property of the United States, also forbids legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in transfer of the title after the initiation for its acquisition."

USC 30 § 26. Locators' rights of possession and enjoyment

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 **so long as they *comply with the laws of the United States*,** and with State, territorial, ***and*** *local regulations* not in conflict with the laws of the United States ***governing their possessory title***, **shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations**,

-R.S. ⁋ 2322 derived from act May 10, 1872, ch. 152, ⁋ 3, 17 Stat. 91.

To summarize: Federal officers acting without the approval of Congress and outside the internal management of government are subject to the jurisdiction of the State. There is no question here that federal agents acting pursuant to invalid laws or contrary to the laws of the United States are subject to arrest or other liability. Injunction will issue. The Report identifies Congress the Principle trustee and further indicating its principle authority can not be interfered with, including its delegated agent. This appears to be acknowledgment of the Trustee status of the Federal government in holding as proprietor of the public lands for disposal to the people accepting a land disposal offer. To dispose land is to divest the federal government of authority and jurisdiction in it. As a matter of law, agencies of Government and its employees are without authority to interfere with lawful disposed uses, or livelihood on "public domain" and may be subject to the penal or other liability for acts contrary to law or the mineral grant.

Prepared March 3, 2011. Commissioned to:

Dave McAllister,
President of S.W.O.M.A.

Ron Gibson,
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AN ACT [H. B. 208]

To declare certain thoroughfares to be county roads; declaring how roads of public easement may be established, altered, or vacated; and to amend section 4062 of the Code, as prepared and annotated by William Lair Hill.

Be it enacted by the Legislative Assembly of the State of Oregon:

Seciton 1. All roads or thoroughfares not heretofore legally established within the State of Oregon that may have heretofore been used, or may hereafter be used, for a period of ten (10) consecutive years or more by the general public for the purpose of travel, without interference or protest, are hereby declared to be county roads.

Section 2. That section 4062 of the code, as prepared and annotated by William Lair Hill, be amended to read as follows:

§ 4062. All applications for laying out, altering, or locating county roads shall be by petition to the county court of the proper county, signed by at least twelve householders of the county residing in the vicinity where said road is to be laid out, altered, or located, which petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road; *provided*, that whenever one or more persons owning all the deeded land over which it is desired to establish a county road shall present to the county court a good and sufficient deed, properly executed, forever dedicating to the use of the public a strip of land to be used

as a public road, said county court may, if it deems proper, accept such dedicated road as a county road, or road of public easement, and thereafter such road shall be subject to the same provisions as apply to other county roads or roads of public easement.

Section 2. No road of public easement shall be altered or vacated except by the county court in the manner now provided by law; and no county shall be bound to work, or improve, or keep in repair such road of public easement.

Approved February 28, 1901.