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ALAN GLOVER

BY *[Signature]* CLERK
DEPUTY

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.

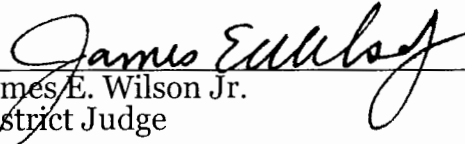
27 ⁴Id.

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

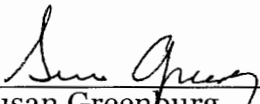
9
10
11 **CERTIFICATE OF SERVICE**

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:

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