Murphy & Buchal LLP

3425 S.E. First Yamhill Street, Suite 100
Portland, Oregon 97214

James L. Buchal

telephone: 503-227-1011
fax: 503-573-1939
e-mail: jbuchal@mbllp.com

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BY FIRST CLASS MAIL

William F. Hagerty
Director of Appointments
Trump Presidential Transition Committee
1717 Pennsylvania Avenue
Washington, D.C. 20006

Dear Mr. Hagerty:

I write to alert the Administration of an important threat to national prosperity, particularly in the Western states. Federal mining and land management statutes provide that the highest and best use of ground containing minerals is mineral development. They also provide that undue and unnecessary environmental degradation should be avoided in mineral development, including compliance with generally-applicable state and federal air and water quality standards.

The States of California, Oregon and Washington are currently asserting the right to override this entire federal system by enacting state laws that flatly prohibit any motorized mining on federal lands. They are aided in this decision by an ambiguous, and arguably erroneous Supreme Court decision, which held by a 5-4 vote that the Forest Service could require miners on federal land to obey state statutes. The Court drew a vague distinction between land use controls and "reasonable environmental regulation".

I graduated from Harvard College, Yale Law School, and Yale Business School, learned to litigate at Cravath, Swaine and Moore in New York City. I have been litigating these and other mining and environmental law issues for a decades, serving as trial and appellate counsel in cases such as:

- *Siskiyou Regional Education Project v. U.S. Forest Service*, 565 F.3d 545 (9th Cir. 2009);
- *United States v. Backlund*, 689 F.3d 986 (9th Cir. 2012);
- *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006 (9th Cir. 2012), cert. denied, 133 S. Ct. 1579 (2013)
- *People v. Rinehart*, 377 P.3d 818 (Cal. 2016), *pet. for cert. in preparation*;
- *Bohmker v. Oregon*, 2016 WL 1248729, No. 1:15-CV-01975CL (D. Or. March 25, 2016), *appeal pending*.

In the latter two cases, the Obama Administration dispatched the U.S. Department of Justice to advise the Supreme Court of California and the United States Court of Appeals for the Ninth Circuit in these latter two cases that the United States does not object to state-law based mining prohibitions. The particular statutes at issue involve multi-year moratoriums on any motorized mining activities in or near rivers. I am informed that the Justice Department took this position against the wishes of federal mineral resource administrators.

The threat of this issue extends well beyond the smaller-scale mining involved in these appeals. The Trump Administration's goals regarding energy independence and coal may easily be frustrated by state law initiatives if state law is allowed to throttle the development of federal mining claims on federal land.

More generally, for the last twenty years or more, lawyers within the federal natural resource agencies and the Environment and Natural Resources Division of the U.S. Department of Justice have been gradually pushing interpretations of federal natural resource law that are materially impairing National prosperity for non-existent environmental benefits.

A coherent plan to mitigate the adverse developments here might extend to having the Justice Department withdraw its amicus briefs in the two ongoing cases, and even reversing its position. A Solicitor's brief in support of the forthcoming petition for certiorari, in preparation by Pacific Legal Foundation, may be appropriate as well.

The Presidential appointment for the Chief of the Environment and Natural Resources Division will have a great deal of influence on this and other important natural resource issues in the coming Administration. Presumably you can find someone better qualified than me to serve in that post, but I would urge you to look West for your appointee, and find a veteran of the legal battles over natural resource development who has been litigating on the right side.

Sincerely,

James L. Buchal

cc: Congressman Greg Walden