BEFORE THE

UNITED STATES ENVIROMENTAL PROTECTION AGENCEY

In the Matter of: DOCKET NO.CWA-10-2016-0109

Dave Erlanson, Sr., Individual,

Swan Valley, Idaho,

Respondent

Defendant

Challenge to the jurisdiction of the United States Environmental Protection Agencey over the Respondent Defendant in the above questioned case!

Jurisdictional Arguments

Federal jurisdiction must be considered in light of our dual system of government and may not be extended. In view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government (United States v Lopez, 514 U.S. 549,115 S. CT 1624 (1995)) (CAHA V U.S. Scotus 1894).

Jurisdiction can be challenged at any time and jurisdiction, once challenged, cannot be assumed, it must be decided (Basso v Utah Power and Light Co. 395 F2md 906, 910)

Lastly, and importantly in "The matter of Dave Erlanson Sr. CWA docket #-10-2016-0109 "A departure by a court from recognized and established requirements of law However close apparent adherence to mere form of methods of procedure which has the effect of depriving one of a constitutional right is an excess of jurisdiction." (Wuest v. Wuest, 127p2d).

In consideration of the aforementioned findings with relevant adjudicated cases cited and question the jurisdiction of the Administrative Law Judge working within the E.P.A.'s special impartial mission section of the agency to render an impartial verdict in the case concerning myself, the defendant in this case!

To wit, I offer the relevant undisputed facts in CWA docket #-10-2016-0109.

(1) Clear statement rule instructs courts to **NOT INTERPRET A STATUTE** in such a way that will have particular consequences unless the statute makes unmistakably clear it's intent!

(2) With this point in mind, one has to consider the unambiguous language written by the State of Idaho on page 22 of the South Fork Clearwater River Basin plan; the site of my Federal mining claims related to the case at bar!

(3&4) Two distinct points need to be raised here as per the jurisdictional argument! First it is stated that the State of Idaho's one step Recreational Dredge Mining Permit **Does Not Require** an E.P.A. (NPDES) permit. Secondly, it states more importantly, even than the immunity stated above (No NPDES needed), that suction dredges "**Not considered Recreational Are** considered a "Source Point" and **do** require an NPDES permit from the E.P.A. thereby reaffirming the fact that recreational dredges **Need Not Have** an NPDES permit to operate within **Open Idaho** WOTUS. (see National Wildlife Federation v Gorsuch D.C. ar 1982)

(5) In the Gorsuch case one finds 5 parameters which must be met in order for the E.P.A. to require a permit (NPDES). Primarily to this list is "Source Point" which we have already discussed! Section 502(12)33USC & 1362(12) defines the key phrase "discharge of a pollutant as "any addition of any pollutant to WOTUS from any Point Source!" To this date none of these immunities have been withdrawn by the Idaho Legislature, or the

Federal Mining Estate to my knowledge (acts of 1864,1866,1870,1872) making this overreach into State sovereignty a 10th Amendment matter by the Environmental Protection Agencey! (CAHA v U.S. Scotus 1894) As well as violating the provisions of the Mineral Estate Grant Acts of Congress!

(6) 2015 Idaho Recreational Mining Authorization (Letter Permit). It states in unambiguous language that the "U.S. Environmental Protection Agencey (E.P.A.) Now requires an NPDES General Permit for small scale suction dredging in Idaho. There is **NO** mention of the South Fork of the Clearwater River needing a special permit, or individual permit of any kind. It also does not state that "**No Permit** is available for suction dredging on this water body for the 2015 dredge season by the E.P.A.! In lieu of federal statute state law is controlling as per the 10th amendment of the constitution.

(7) Further, 33 USC uses the word "means" which is a limiter of what is and is not considered a pollutant in the case at bar! More about this and EPA shifting definition of what defendant actually introduced into WOTUS will be addressed in appeal! So, under the Gorsuch case 2 of the 5 parameters needed, at the least, are **Not** applicable and therefore **NO** NPDES permit is or was needed!

(8) **Nothing** from the "**Outside World**" was introduced into WOTUS as upheld under Gorsuch D.C. ar 1982.

(9) See transcript of penalty phase CWA-10-2016-0109, Nothing was entered into testimony that is regulatable under NPDES!

(10) So, concluding with U.S. v Harris (U.S. 1954) where a law, statute is indefinite and encourages erratic arrests / convictions the underlying principle here is that **No** man shall be held

responsible for conduct he could **Not** reasonably understand and be later prosecuted for! To punish a person for what he has done when the law allows (**Idaho permit**) him to do so is a violation of due process. The immunity granted me by the State of Idaho excludes the E.P.A. from permitting suction dredging.

(11) We must now address the issue of the E.P.A.'s jurisdiction over operations and the citizens business as he conducts it on his Federal Mining Claims.

(12) First, we must look at the Mineral Estate Grant Act of 1872, commonly, but erroneously referred to as the Mining Law of 1872! Rights herein granted cannot be taken away or permitted and, in this light, every single piece of lawful legislation passed into law to regulate the environment, since the grants passage, bold **Savings Clauses** (provisions) in them to protect these grants of rights to miners! These grants are exclusive and Congress may not breach these as the grantor. I believe this to be applicable to the agencies of the government as well, under the control of congress!

(13) Second, a Federal Mining Claim is considered private property and as such is protected under the 4th, 5th and 14th amendments the latter dealing with the states. See Freese v U.S. 1981; Oil Shale Corp v Morton 1973 and (Adams v Witmer 9th cir 1958)

(14) In Adams v Witmer section 8 has pertinent information as to the jurisdiction in CWA-10-2016-0109. It states factually that the applicants right to mine claims is a property right and it follows that a requirement of due process must necessitate that he has a hearing before he can be deprived of that right.

(15) Prperty rights are protected by the 4th and 5th amendments of the constitution in regards to enforcement actions by the Federal government and/or its agencies! No impairment of a granted right to operate one's business on his property can be accomplished by anyone acting alone or on behalf of an agency authority of government without a due process hearing on the matter! **I had no hearing!**

(16) On one last jurisdiction issue which I'm compelled to mention you will find it abundantly clear that, as per congressional intent made into law you lack jurisdiction in case at bar! The multiple surface use act of 1955, July 23 in plain text states that no agent of the United States, permittees or licensees, shall interfere with mining or processing operations! Even more fatal to the jurisdiction of the E.P.A. it provides further: that nothing in this act shall affect or intend to affect or in any way interfere with laws of the states which be wholly or in part westward of the ninety-eighth meridian relating to ownerships, Control, appropriations of ground/surface waters within any unpatented mining claim! **The E.P.A. violates this act of congress!**

For all of what is mentioned the Environmental Protection Agency, the administrative law judge lacks jurisdiction in CWA-10-2016-0109. Only an article 3 Constitutional Court can adjudicate this matter. See Hale v Henkel 1906- standing on my Constitutional 5th Amendment Right as a citizen of both Idaho and the United States to conduct my business!

See Marbury v Madison 1803- Any law repugnant to the constitution is null and void.

Also, Miranda v Arizona 1966 – Where a right is secured by the constitution, there can't be any rule making or legislation which would abrogate them!

(17) Finally, the EPA violates and disregards SCOTUS cases regarding the transfer of pollutants within the same waterbody as decided in Los Angeles County Flood Control Dist. V. Natural Resource Defense Council (SCOTUS Jan. 8, 2013). The second case they disregarded is even more fatal to the EPA Jurisdiction (NPDES permit scheme) for suction dredgers operating their business according to prescribed congressional intent as per the mineral estate grants. This case in South Florida Water Management District V. Miccosukee Tribe of Indians (SCOTUS 2004). In this case the Court affirmed that mere movement of polluted water through an instream engineered improvement/device within a single WOTUS (Waters of the United States) CANNOT Constitute the "addition of a pollutant"! An engineered device=a suction dredge! Add to these cases the fact that according to the Idaho Dept. Of Environmental Quality Integrated Water Report 2016 approved as correct, Accurate by the EPA in 2019 the undisputed fact that the South Fork of Clearwater River, Idaho where this case originated from is listed as containing pollutants (category 4A) but is further listed as a **Polluted Waterbody** (Category 4C Impairment caused by pollution!).

(18) E.P.A. jurisdiction to impose an NPDES Suction Dredge permit system for recreational (non-source point) sized machines, considering E.P.A.'s own "**FACT SHEET**" entitled Clean Water Rule which unambiguously states and I quote here "The Clean Water Act protects the nations' waters. A Clean Water Act permit is only needed if these waters are going to be polluted or destroyed! (See IDEQ 2016 Integrated Report Category 4C)

(19) Finally, concerning the citizens granted rights and applicable laws passed by the congress we see the E.P.A. ignores and overrides these acts and laws. As per the question "Do the Federal Agencies have control of the waters of the United States and those grounds beneath them"? Clearly, in the Organic Acts of 1897 the agencies have a limited jurisdiction that being the uninterpreted flow of WOTUS within the geographic borders of states: **NOTHING MORE!** (See Kansas V. Colorado 1906) (See Multiple Surface Use Act 1953)

(20) The Submerged Lands Act of 1953 states that the states hold title to the lands under WOTUS, where it is here, that a suction dredge operates! In the 2019 SCOTUS case "Sturgeon V. Frost" the submerged land Act was upheld! It's evident again, to this citizen, that the E.P.A. lacks jurisdiction in CWA-10-2016-0109!

The United States Environmental Protection Agency lacks jurisdiction in the case at bar, as well as the requirement to permit any suction dredge on polluted waters within the United States (WOTUS) by means of, in this case, an NPDES permit!

Additionally, to extract minerals (congressional intention of Fed. Mining Claims as mandated by mineral estate grants!) and to interfere with one's business on his private property as protected under the constitution renders E.P.A. Jurisdiction as null and void in this case at bar CWA-10-2016-0109!

As I'm a pro-se litigant please excuse my informalities, my apologies!

The U.S. Environmental Protection Agency, in my view, disregards the aforementioned SCOTUS Cases and lacks jurisdiction in CWA-10-2016-0109.

(21) Another jurisdictional claim resides in numerous laws passed by Congress from the 1897 Organic Acts to the mining Grants "laws", to the Multiple Surface Use Act of 1955, to the Federal Land Management Policy Act of 1976. These laws specifically are shown to be relative to the public lands, I.e. Territorial Properties of the United States, **NOT** lands disposed under laws of the U.S., from public lands to public domain. The Federal Agencies have no management authority over lands privately settled as public domain! Are these laws subordinate to the jurisdiction of the E.P.A. and no longer enforceable?

(22) We now look at the 40 C.F.R. & 122.3 entitled "Exclusions" Section I. Water transfer "means" an activity that conveys/transfers/connects WOTUS without subjecting the transferring water to intervening industrial, municipal, or commercial use. This exclusion does not apply to pollutants "Introduced" by the activity itself to the transferred WOTUS. Consider this and the dictionary definition of "introduced" and these three cases: 1. National Wildlife Federation V. Consumers Power 6th circuit 1988 (see section 16 & 17) 2. National Wildlife Federation V. Gorsuch D.C. circuit 1982. Here the court opines that the E.P.A. argument of addition of a pollutant has to be from "The outside world" is reasonable and is upheld! Under 33 USC & 1362 (6) the statutory list of pollutants does not list suspended solids, nor does it list sediment! This list is limited by use of the word "means". Congress used this restricted phrasing here to state unambiguously what is and what is not a pollutant! It excludes any meaning **NOT STATED**! Therefore, in this case at bar

no jurisdiction exists and the finding of defendant's guilt in the accelerated motion (Sept. 2018) is erred and in violation of due process as this citizen looks upon this case! (see Trinsey V. Pagliaro D.C.Pa 1964) where there are No depositions, admissions or affidavits the Court has No facts to rely on for a summary determination (Sept 27, 2018 Accelerated Motion?). Suspended solids occur in ever Waterbody in the world and to a more or less degree in these WOTUS specifically does sediment (not a point source, but, in fact a non-source point of pollution, not applicable to an NPDES 402 permit). The EPA names these entities interchangeably as the pollutants the Respondent/Defendant discharged **"INTO"** WOTUS, clearly outside EPA jurisdiction in this case at bar (non-source point pollutants, sediment fall under state authority)! These naturally occur! 3. Appalachian Power Co. V. Train 4th cir. 1976 see again, naturally occurring is discussed and as I again mention "A point source must" **"Introduce"** the pollutant **"Into"** WOTUS **"From"** the **"Outside World"** Catskill Mts. Chpt of Trout Unlimited Inc. V. City of New York (2nd Cir. 2001) (Quoting Gorsuch 693F.2D at 165). Non-point sources are to be **STATE REGULATED**!!! (10th Amend?)

As these cases show the pollutant must be introduced at the point source, not be naturally occurring upstream as well as downstream of the engineered device, I.e. suction dredge. As per the 5 parameters the idea of discharge is hard to assume, given the idea that **NOTHING** ever leaves the water column during the process of dredging so nothing can be discharged **"INTO"** WOTUS!

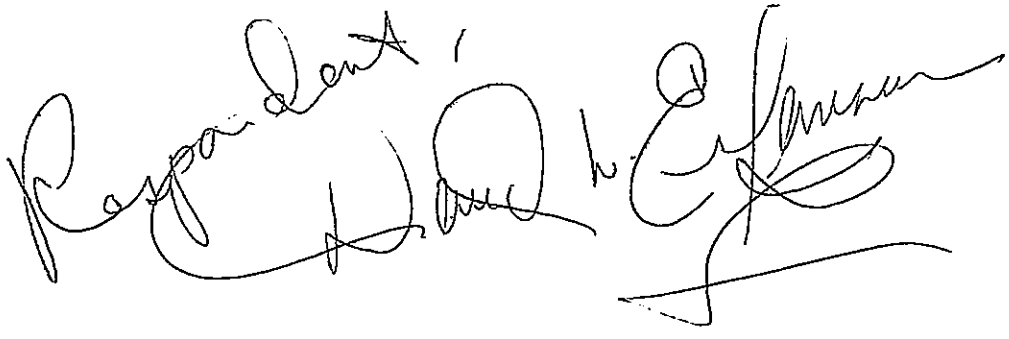
(23) The Administrative Procedures Act 5 USC & 552 (a)(1), provides a fatal blow to the jurisdiction asserted by the E.P.A. in case at bar CWA-10-2016-0109! Even though the E.P.A asserts the Regulatory Flexibility Act it still entered into the Federal Register

on 04/04/2013 for the U.S. Environmental Protection Agency, Region 10 a **FINAL NOTICE** of **RE-ISSUANCE** of a **"GENERAL PERMIT"** Issuing a NPDES General Permit (**IDG-37-0000)** to placer mining operations for small scale suction dredges 5" Nozzle size and less. There is **No Mention** of the South Fork Clearwater River "Not" being eligible as of the effective date of May 6, 2013. There is NO mention that to suction dredge this WOTUS specifically one must first obtain an **"INDIVIDUAL PERMIT"** (NPDES).

As if these arguments aren't sufficient The E.P.A. from 2008 exert influence on the state of Idaho's regulatory agency for permitting suction dredging (IDWR) without any authority to do so from the Idaho legislature until May of 2014. The E.P.A.'s required NPDS permit violates the constitution of the state of Idaho **Article I, II, XIII, XIV, XVI, XXI; Article 2 section 1; Article 15 section 1, 3.** Neither submission nor consent by the states can enlarge the power of congress: non can exist except those granted (see U.S. v Buttler 1936).

This citizen Respondent/Defendant at case at bar finds the foregoing arguments to be most compelling and therefore challenges the E.P.A.'s jurisdiction in the matter docket #CWA-10-2016-0109

See U.S. V. Andersen, 60F.Sups 649(D.C. Wash 1945) see Jayce V. U.S. 4742D215, see Lantana V. Hopper 102F.2D188; see Main V. Thiboutot, 100S CT 2502 (1980) see Basso V. Utah Power & Light Co. 395F.2D906 see Stoch V. Medical Examiners 94Ca 2D751



Now, as far as the EPA appeals board is concerned with an appeal for docket#C.W.A.-10-2016-0109 I have the following valid concerns as to the jurisdiction and constitutional legality of such a tribunal as the EPA appeals board.

1) 28 U.S.C.@1331 federal question of original jurisdiction on civil actions arising from constitutional issues such as the 5th amendment and its protections violated by the EPA in the case at bar(due process). District courts shall maintain this jurisdiction.
2) Non-delegation doctrine states that congress cannot legally give judicial power To appointments to an unelected official of an agency and as a result would be a violation of the constitution.
3) Separation of powers: actions taken(2) further result in a violation of separation of powers giving the EPA the unilateral ability for rule making without congressional oversight(CRA, Congressional review act),(APA Administrative procedures act), enforcement mechanisms and judicial oversight, all within its capabilities as an agency within the federal government contrary to the enumeration of powers specified in the Constitution of the United States. In essence, acting as a de facto government in and of itself.
4) Lastly, a look at the organic acts of 1897 title 16 chapter 2 subchapter 1 section 480. See(A)

In the Matter of:

Dave Erlanson Sr.

Docket #CWA-10-2016-0109

Certificate of service

I hereby certify that respondents "challenge of Jurisdiction was sent to the following parties via U.S. mail!

Signature Dave L. Erlanson Date Nov 19 2020

Office of A. L. J. "Mail Correction" "Clerk"

1. U.S. Environmental Prot. Agency
1200 Pennsylvania Ave., N.W.
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3. U.S E.P.A. Appeals Board
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4. J Matt Moore
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INSERT (B)

28 U.S. Code § 1331. Federal question

U.S. Code Notes

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(June 25, 1948, ch. 646, 62 Stat. 930; Pub. L. 85–554, § 1, July 25, 1958, 72 Stat. 415; Pub. L. 94–574, § 2, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 96–486, § 2(a), Dec. 1, 1980, 94 Stat. 2369.)

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