

Month Day, Year

To:  
David Bess, Chief of Enforcement  
California Department of Fish & Wildlife  
1416 9<sup>th</sup> St, Room 1326  
Sacramento, CA. 95814  
(916) 653-4094

From:  
Your Name  
123 Main St  
Anywhere, CA, 91234

Subject: **Direct and Constructive Notice**

Dear Mr. Bess,

This is a response to you and your employee's harassment and discriminatory actions. On January 12, 2015, San Bernardino California Superior Court Judge Gilbert Ochoa ruled that

1. A suction gold dredge is the only practical method of gold recovery on many federal mining claims
2. The State of California continues to require permits but refuses to issue such permits
3. The Department of Fish & Wildlife has been prohibited from issuing permits until certain legislatively-required conditions can be met, and those requirements are not attainable
4. When state law conflicts with federal law—in this case by prohibiting suction gold dredging—federal law prevails.

Judge Ochoa stated, "'On its motions for summary adjudication, the Court finds there is no triable issue of material fact on the issue of Federal Preemption and that as a matter of law and in actual fact, that the State's extraordinary scheme of requiring permits and then refusing to issue them whether and/or being unable to issue permits for years, stands 'as an obstacle to the accomplishment of the full purposes and objectives of Congress' under *Granite Rock* and a de facto ban."

Judge Ochoa went so far as to call the California permit scheme "unenforceable."

I firmly believe you and your subordinates have no authority to enforce a permit scheme that Judge Ochoa has ruled is "unenforceable." Law enforcement agents of the California Dept. of Fish & Wildlife cannot deny my rights to surface use and occupancy for mining purposes, nor can they deny Judge Ochoa's lawful ruling. The Multiple Surface Use Act of 1955 dictates, "...any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto..." To do so would be an infringement on my most basic and fundamental constitutional and statutory rights. In order to help you and your co-workers to stay within the guidelines of the law I am giving you the following fair notice:

This notice constitutes direct and constructive notice to you and all of your subordinates and to your replacement, successors, substitutes or sit-ins. If you, under the color of law or usurped police power violate any of my civil rights, constitutional rights, or legal rights; whether they are contract rights or refusal of contract rights, or any violation of due process of law, or equal protection under the law available to me as a right, I will sue you for general and punitive damages for any and all that you may ever own. Immunity is not provided to government agents violating clearly established law, where officials who knew or should have known of the constitutionally violative effects of his or her actions.

All rights and due process retained without prejudice UCC § 1-308.

Respectfully submitted on the \_\_\_\_\_ day of March 2015.

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Signed,

The citizen presenting this courtesy warning to public servants is not volunteering for anything!

### Warning

United States Criminal Code Title 18, Chapter 13 § 241 and 242 make it a felony to use or conspire to use the color of law to enforce a code or regulation which results in the violation of a person's rights. Violators will be prosecuted.

#### Section 241: Conspiracy Against the Rights of Citizens

If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, or because of his having exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with the intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured – They shall be fined not more than \$ 10,000 or imprisoned not more than 10 years or both and if death results – They shall be subject to imprisonment for any term of years or for life.

#### Section 242: Deprivation of Rights Under Color of Law

Whoever, under color of law, statute, ordinance, regulation, or custom willfully subjects any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race than are prescribed for the punishment of citizens, shall be fined not more than \$ 1,000 or imprisoned not more than a year, or both: and if death results shall be subject to imprisonment for any term of years or for life.

Title 42 U.S.C. § 1983: “When two or more persons conspire to use force, intimidation, or threat; or to injure a person, and deprives them of the rights and privileges as a United States citizen, the party injured may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

Harlow v. Fitzgerald (1982) 457 U.S. 800 102 S. CT. 2727, 73 ed2d 396 The Supreme Court of the United States stated: “We therefore hold that government officials performing discretionary functions generally are shielded from liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (102 S. CT. at 2739)

“...A reasonable competent public official should know the law governing his conduct.” (102 S. CT. 2739)

“By defining the limits of qualified immunity essentially in objective terms, we provide no license to lawless conduct...” (102 S. CT. at 2739)

Thus the Supreme Court outlined the contours of the qualified immunity doctrine in Harlow: “We affirm on the basis of qualified immunity alone.”

You as a government official are charged with both knowing the law governing your conduct and with obeying the law.

You will be sued personally in a civil action for violation of my constitutional rights. A civil action does not depend upon the willingness of a U.S. attorney to prosecute.