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MEMORANDUM

To: Dave McCracken, The New 49'ers Legal Fund
From: James L. Buchal
Date: June 2, 2019
Re: *Bohmker v. Oregon* (U.S. Supreme Court)

By now you have heard that the Supreme Court denied the petition for *certiorari* filed by the Oregon miners without explanation, as is customary. This was not entirely unexpected, because despite a campaign to reach out to the Department of Interior, the Department of Agriculture, the Justice Department and the White House, the Trump Administration took no action to support Supreme Court review of the Ninth Circuit decision. As a result, the legal principle is now established, throughout the area controlled by the Ninth Circuit, that states may implement permanent mining bans on federal land, notwithstanding the federal government's grant of mining claims.

Political pressure (primarily mass letter writing) by small scale miners did have some belated effect. Shortly after the denial of review, I received a call from a high-level Interior Department official who apologized in substance for the fact that the issue fell through the cracks, and said that the Trump Administration should have taken a stand—at least against permanent mining bans. He was interested in discussing ways that the issue might be teed up again, with, for example, more specific Administration support for particular mining efforts. None of the miners in the *Bohmker* case had plans or operation or other permitting documents specifically authorizing the activities protected by Oregon; the case was based on the Congressional purposes in granting the mining claims themselves, and various federal land management statutes limiting state authority.

I intend to continue to push the Administration, and not just at Interior; it is also necessary to activate Forest Service mining officials. It is well within the power of the Administration to revise the Forest Service and BLM regulations to address conflicts with state law. The agencies could and should clearly state that states may not prohibit mining activity authorized under federal law, and provide guidance as to what “reasonable” environmental regulation means under *Granite Rock*. Such a change in federal law, coupled with an Administration defense of small-scale mining efforts when challenged, would dramatically shift the legal landscape.

It is disappointing that the President's efforts at swamp-draining are going so incredibly slowly, but continued lobbying by small-scale miners should slowly but surely help remove obstacles to mineral development on the federal lands.

Sincerely,



James L. Buchal