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ATTORNEYS AT LAW

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February 28, 1996

**CERTIFIED MAILING -**  
**RETURN RECEIPT REQUESTED**

Ron Winkler  
District Manager  
Bureau of Land Management  
Winnemucca District Office  
705 East 4th Street  
Winnemucca, Nv 89445

**DEMAND TO CEASE AND DESIST**

Dear Mr. Winkler,

I have been retained by Everett E. Gustin and Gustin Corporation (hereinafter "Gustin") to represent them with regard to certain illegal actions which you have taken against them in recent months. It has come to our attention that over the past several months you have been in contact with various individuals and companies in the mining industry in Nevada regarding their employment of Gustin as a drilling contractor. You have threatened certain companies and individuals that if they retained Gustin as their drilling contractor that you would then require them to file a "Plan of Operations", which, as you know, significantly increases the burden on an operator in that bonding and planning requirements are imposed which are not imposed under the "Notice" level of operations. This illegal activity on your part has already caused certain companies either to not retain Gustin or to cancel or attempt to cancel existing contracts. We hereby demand that you cease and desist from this course of action, that you withdraw the threats which you have issued to these individuals and companies within the Nevada mining community, and that you instruct them that Gustin is fully qualified to serve as a drilling contractor on all mining operations for them.

It appears that your course of action must be based upon the third paragraph of your "Decision" of January 27, 1995, in which you state that "these requirements will also apply to all operations on claims owned by you (or Gustin corporation, as appropriate, even if your company is not the operator), and any operations in which you or your company are a partner, agent, or contractor." In support of your position, you cite IBLA Decision 91-211, Del M. Ackels d.b.a. Gold Dust Mines, Dec. 7, 1993. I have carefully reviewed the Ackels case, and I find absolutely nothing in that decision to support your position that you can apply your requirement to submit a "Plan of Operations" to all operations in which Gustin is a Contractor. The Ackels decision says that "the operator shall also be responsible to reclaim operations conducted without an approved plan of

operations" citing 43 CFR 3809.3-2(a). The decision goes on to hold that "an operator who is not the owner of a claim is properly issued a notice of noncompliance for failure to complete reclamation. . . ." The case finally holds that "as an operator," Ackels could be required to perform the reclamation work he agreed to undertake as a condition for future operations. None of this applies to Gustin because he is not an "operator" on any job in which he is acting as a contractor, and therefore you cannot apply these burdensome requirements to operators who choose to use Gustin as a contractor.

I have carefully reviewed 43 CFR 3809 to determine whether Gustin, when acting as a contractor, can be considered to be an "operator" under your regulations. An operator is defined as a person conducting or proposing to conduct mining operations. (3802.0-5(g)). Contractors don't "propose" anything to the BLM, and in fact, usually the BLM doesn't even know who the contractor is. To find out what the BLM means by the word "an operator" or "the operator", we must also look to the context of the regs. 3809.3-5 states that "the operator" shall maintain his structures, equipment, and other facilities in a safe and orderly manner 3809.3-7 requires "all operators" to maintain the site, structures and other facilities in a safe and clean condition during non-operating periods. Of course, a contractor simply hired to do drilling would never be on the site during non-operating periods and could not be expected to "maintain the site". Notice requirements, plan submission requirements, bonding requirements, reclamation requirements, and so on, are all imposed on operators, and not upon their contractors or subcontractors. You know as well as I do that a contractor for an operator is not considered to be an operator on that job, and thus for you to threaten operators that they employ Gustin at the peril of being forced to submit and abide by a "Plan of Operations" is without foundation in law, a position without legal merit, and is therefore clearly an act of oppression and fraud.

Perhaps you are not aware of the numerous violations of civil, criminal, and constitutional law which you have committed. Let me list a few of them for you:

1. You have defamed Gustin by telling operators that he is in a status of "Non-compliance" when in fact, that question is the subject of a current legal dispute between you and Gustin. Gustin sent you a "Constructive Notice and Demand" on 12-30-94 demanding that you rescind your alleged notice of non-compliance and indicating to you that Gustin was in compliance with all legal requirements of the State of Nevada regarding the Happy Day mining claims. Proof of this fact is shown by the letter of March 15, 1995 from Nevada Department of Conservation and Natural Resources, attached hereto, showing that Gustin has complied with Nevada's requirements. NRS 321.5973 requires that the rights and privileges of the people of Nevada must be preserved under administration by the State. Specifically, that statute states that the General Mining Laws are under the administration of the State. Since Gustin is in compliance with the Nevada law and the administration of the mining laws is by the State, you have no legal right to state to third parties that Gustin is in a state of non-compliance. Furthermore, your own regulations, 43 C.F.R. 3809.3-1(a) state that your regs do not preempt state law. If they do not preempt state law, and Gustin is in compliance with state law, then how is he in a state of non-compliance? You may be able to take that position between you and Gustin, but you certainly have no right to state

to third parties that he is in non-compliance until the matter is legally resolved. You have damaged his reputation in the mining industry in Nevada, and thus are guilty of slander, libel, and defamation.

2. You are guilty of perpetrating an injurious falsehood and guilty of disparagement of Gustin, since you have told people that he cannot be their contractor because of his alleged non-compliance with your rules. Injurious falsehood and disparagement are distinct torts and are not the same as defamation, and you are guilty of them because you have disparaged Gustin's business and caused him economic damage.

3. You are guilty of tortious interference with a prospective advantage, in that you have caused certain operators not to enter into contracts with Gustin which otherwise they would have entered into. Thus you are responsible for all damages incurred by Gustin as a result of lost contracts.

4. You are guilty of tortious interference with contract in that your actions and threats have caused certain parties to withdraw from contractual commitments with Gustin. Thus you are responsible for all damages incurred by Gustin as a result of breach of contract by persons whom you have threatened.

5. On this note, you are also subject to the imposition of punitive damages as a result of your unlawful, oppressive, and malicious actions. In Ribeiro v. R.O.A.M., Inc., 14 Bankr. 963 (Bankr. D. Nev. 1981), the court held that where the landlord's conduct was oppressive and constituted an intentional interference with the tenant's business, the tenant was entitled to punitive damages. You, sir, have gone behind Gustins' back and made injurious, false, defamatory statements in a deliberate attempt to destroy Gustin economically, to blackball Gustin in the mining industry in Nevada, to destroy his reputation and his business, and to pressure third parties and Gustin into submitting to your questionable authority over Nevada's lands. You have maliciously and oppressively retaliated against Gustin for standing up for his rights, and thus you are personally subject to punitive damages.

6. You have committed the crime of extortion as defined in NRS 205.320, entitled "THREATS", which states:

A person who with the intent to . . . compel or induce another to . . . to procure any illegal or wrongful act. . . threatens directly or indirectly. . . to injure a person or property . . . is guilty of. . . a category B felony. . . .

Extortion is punishable by up to 10 years imprisonment or by fine of up to \$10,000, and the court must order the guilty party to pay restitution.

You are guilty of the crime of extortion because you have threatened mine operators that they will be subject to economic penalties unless they break their contracts with Gustin. So you have threatened them in order to get them to commit a wrongful or illegal act. That is extortion, pure and simple, and you are clearly guilty of it.

7. You have violated Gustins' civil rights in that you have deprived or attempted to deprive them of their liberty and their property without due process of law. You are required to act pursuant to your own rules and regulations. There is absolutely no authority in any of your rules or regulations for what you have done. Where does it say that you can put an owner into non-compliance and then take away his right to act as a contractor, threaten those who would contract with him with economic and punitive sanctions, attempt to break him financially, and maliciously try to destroy his ability to make a living because you don't happen to agree with him? Where does it say that an operator on one job can be prevented from being a contractor on another job by going behind his back and blackballing him with the people within his own industry? Of course, you have no authority to do any such things, and "when an agency is required to act pursuant to a rule but has failed to do so, the agency is wholly without legal authority to act." Spruytte v Walters, 753 F.2d 498 (1985). That case goes on to say that "the touchstone of due process is protection of the individual against arbitrary action of government." You have acted arbitrarily, without authority, and without so much as the courtesy of notifying Gustin that you were going to threaten operators with these sanctions if they did business with Gustin. It would also appear that you have violated Gustins' First Amendment Rights because you are doing this with the ulterior purpose of retaliating against Gustin due to their political activities in opposing your assertion of authority over Nevada's lands. Under Bivens v. Six Unknown Named Fed. Narcotics Agents, 403 U.S. 388 (1971), you can be held liable for your unconstitutional acts in depriving Gustins of their civil rights. In short, you have deprived Gustins of their property and their liberty without due process of law because you have done these things without a notice or hearing and you have done them without any authority. And you are personally liable, because whenever a federal officer or agent exceeds his authority, he no longer represents the government and loses the protection of sovereign immunity from suit. Bell v. Hood, 71 F.Supp. 813 (1947).

8. You have engaged in a pattern of racketeering activity which has damaged Gustin, and thus you are liable for treble damages under the RICO statutes. The pattern of racketeering activities is established by your repeated extortionary acts in threatening and intimidating mining operators into breaching their contracts with Gustin or not entering into contracts with Gustin. These acts of extortion appear to be continuing and are thus subject to a treble damages award under RICO.

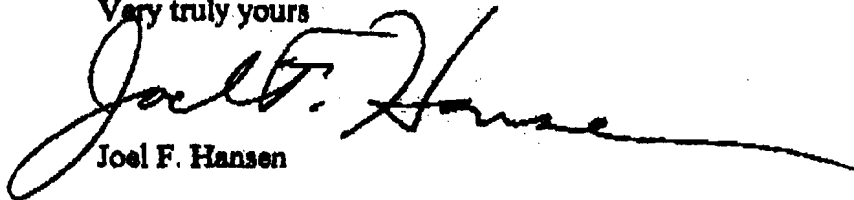
### DEMAND

We demand that you immediately cease and desist your tortious, criminal, and unconstitutional behavior. Specifically, we demand that you notify all persons and/or companies whom you have told that Gustin is in a non-compliance status that they can enter into contracts with him without fear of reprisal or increased burdens from the BLM and that Gustin is fully qualified to act as a drilling contractor for mining in the State of Nevada, and that you supply us with copies of all of this written correspondence in which you retract your former statements. We further demand under the Freedom of Information Act that you supply to us a list of all persons and companies to whom you have communicated Gustins' status, and that you supply to us all past, present, and future communications between your agency and any such individuals or companies regarding Gustin.

We demand that you respond immediately to the above, at the latest within ten days of the date of this letter. We are currently examining our options for relief, including filing a lawsuit against the BLM, you, and your employees to hold the BLM, you, and them personally liable in damages, including punitive damages, for these tortious, malicious, oppressive, and criminal acts which you have perpetrated, wholly outside your authority, upon Everett E. Gustin and the Gustin Corporation.

Govern yourself accordingly.

Very truly yours

A handwritten signature in black ink that reads "Joel F. Hansen". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Joel F. Hansen

JFH:lb

cc: Burton J. Stanley  
Everett E. Gustin

TO: Ed  
From: Lisa (Joel Hansen)

P 998 574 174



**Receipt for Certified Mail**

No Insurance Coverage Provided  
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Send to	
Ron Winkler	
Street and No.	
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Umatilla 89445	
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Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
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Sent in mail 2/28/96 J. Bluck	

PS Form 3800, June 1997