


1 Code: COMP  
2 Thomas P. Erwin  
3 Nevada State Bar No. 951  
4 Erwin & Thompson LLP  
5 One E. Liberty Street, Suite 424  
6 P.O. Box 40817  
7 Reno, Nevada 89504  
8 (775) 786-9494  
9 Attorneys for Plaintiff

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ELKO  


6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF ELKO**

9 CLAREMONT NEVADA MINES LLC, a  
10 Nevada limited liability company,

11 Plaintiff,

12 vs.

13 STATE OF NEVADA, KIM WALLIN, in her  
14 capacity as the Nevada State Controller, KATE  
15 MARSHALL, in her capacity as the Nevada State  
16 Treasurer; and DOE Defendants 1-10, inclusive,

17 Defendants.

Case No.: CJ-C-10-699

Dept.: (

18 **Complaint**

19 Plaintiff Claremont Nevada Mines LLC ("Plaintiff") alleges:

20 **Parties**

- 21 1. Plaintiff is a limited liability company organized and qualified to transact  
22 business under the laws of the State of Nevada; Plaintiff maintains its principal place of  
23 business in Elko County, Nevada.
- 24 2. Defendant the State of Nevada has waived its sovereign immunity and consented  
25 to suit in Elko County, Nevada, pursuant to NRS 41.031.



1 and approved by the Governor.

2 10. In order to maintain the Claremont Claims, Plaintiff is required under 30 U.S.C.  
3 28f to pay to the Bureau of Land Management an annual mining claim maintenance fee in the  
4 amount of \$140 for each mining claim which Plaintiff owns.

5 11. Plaintiff has not produced and is not producing minerals from any of the  
6 Claremont Claims

7 12. On February 28, 2010, the Assembly of the Nevada Legislature passed by a  
8 majority vote Assembly Bill No. 6 ("AB 6") which was introduced in the Assembly on  
9 February 28, 2010.

10 13. On March 1, 2010, the Senate of the Nevada Legislature passed AB 6 by a  
11 majority vote.

12 14. On March 2, 2010, AB 6 was enrolled and delivered to the Governor.

13 15. On March 12, 2010, AB 6 was signed by the Governor and became law.

14 16. Section 47 of AB 6 states:

15 Sec. 47. Chapter 517 of NRS is hereby amended by adding thereto a  
16 new section to read as follows:

17 1. An additional fee is hereby imposed upon each filing made pursuant  
18 to NRS 517.230 regarding a mining claim held by a person who holds  
19 11 or more mining claims in this state on the date of that filing, in the  
20 amount determined in accordance with subsection 2. The person  
21 making that filing shall remit the fee to the county recorder in such a  
22 manner that, at the option of that person:

(a) The fee is paid in full at the time of the filing;

(b) One-half of the fee is paid at the time of the filing and the remainder  
21 of the fee is paid not later than June 1 of the calendar year immediately  
22 following the filing date; or

(c) The fee is paid in full not later than June 1 of the calendar year  
23 immediately following the filing date.

24 2. If the greatest number of mining claims held in this State by any of  
25 the persons who hold any of the mining claims to which a filing made  
pursuant to NRS 517.230 pertains is:

1 (a) Not less than 11 and not more than 199 on the date of that filing, the  
2 fee imposed by this section is \$70 for each mining claim to which the  
filing pertains.

3 (b) Not less than 200 and not more than 1,299 on the date of that filing,  
4 the fee imposed by this section is \$85 for each mining claim to which  
the filing pertains.

5 (c) Not less than 1,300 on the date of that filing, the fee imposed by this  
section is \$195 for each mining claim to which the filing pertains.

6 3. The county recorder shall:

7 (a) Obtain from each person who makes a filing pursuant to NRS  
8 517.230 an affidavit declaring that the greatest number of mining claims  
held in this State on the date of that filing by any of the persons who  
hold any of the mining claims to which the filing pertains is:

9 (1) Less than 11;

10 (2) Not less than 11 and not more than 199;

11 (3) Not less than 200 and not more than 1,299; or

12 (4) Not less than 1,300; and

13 (b) Based upon the information set forth in that affidavit, collect any fee  
14 imposed on that filing pursuant to this section.

15 4. Any person who:

16 (a) Fails to pay the fee imposed pursuant to this section within the time  
17 required shall pay a penalty in the amount of 10 percent of the amount  
of the fee that is owed, in addition to the fee, plus interest at the rate of  
18 1 percent per month, or fraction of a month, from the date on which the  
fee is due until the date of payment. (b) Knowingly makes a false  
19 declaration in an affidavit provided to a county recorder pursuant to  
subsection 3 is guilty of a misdemeanor and shall pay the amount of any  
20 additional fee, penalty and interest required pursuant to this section on  
21 account of the falsification.

22 5. The county recorder shall, on or before the fifth working day of each  
23 month, deposit with the county treasurer all the fees, penalties and  
interest imposed pursuant to this section which are collected during the  
24 preceding month. The county treasurer shall quarterly remit all money  
so collected to the State Controller, who shall place the money in the  
25 State General Fund.

6. The State Controller shall take such action as may be necessary to  
ensure that the fees, penalties and interest imposed pursuant to this  
section are paid in full.

17. Before enactment of Section 47 of AB 6 the amounts payable by Plaintiff for the  
recording of its notices of intent to hold for the Claremont Claims in accordance with NRS

1 517.230 were \$10.50 per mining claim for a total of \$1,176; under Section 47 of AB 6 the  
2 additional amount of \$70 for each mining claim will be in the total of \$7,840 which is an  
3 increase of the holding costs for the Claremont Claims of 667%; if Plaintiff acquires and holds  
4 an additional 88 mining claims for a total of 200 mining claims, the additional mining claim  
5 amount will be \$85 for each mining claim, an increase of 809%; if Plaintiff acquires and holds  
6 an additional 1,188 mining claims for a total of 1,300 mining claims, the additional mining  
7 claim amount will be \$195 for each mining claim, an increase of 1,857%.

8 **First Claim for Relief**  
9 **Declaratory Relief**

10 18. Plaintiff incorporates by reference paragraphs 1 through 17 of this Complaint.

11 19. Section 47 of AB 6 constitutes the imposition of a tax that is specifically  
12 imposed upon the owners of unpatented mining claims in the State of Nevada, including  
13 Plaintiff, who record notices of intent to hold their unpatented mining claims on or before  
14 November 1, 2010, in accordance with NRS 517.230; notwithstanding that the amounts to be  
15 paid in accordance with Section 47 of AB 6 are described as "fees" such amounts are not  
16 license or regulatory fees imposed or to be collected to fund the regulation of the mineral  
17 exploration or mining industry in the State of Nevada or to compensate the county recorders for  
18 the costs of the recording of notices of intent to hold mining claims, but, in fact and under  
19 applicable law, are amounts imposed solely to raise revenues for the General Fund of the State  
20 of Nevada and, accordingly, are taxes.

21 20. The tax imposed under Section 47 of AB 6 violates Section 1 of Article X of the  
22 Constitution of the State of Nevada which states that the Legislature shall provide by law for a  
23 uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall  
24 secure a just valuation for taxation of all property, real, personal, and possessory, excepting  
25 mines and mining claims, the proceeds of which alone shall be taxed.

1           21.     Section 47 of AB 6 violates Section 5 of Article X of the Nevada Constitution  
2 which provides that the Legislature shall provide by law for a tax upon the net proceeds of all  
3 minerals, including oil, gas and other hydrocarbons, extracted in the state, at a rate not to exceed  
4 five percent (5%) of the net proceeds and that no other tax may be imposed upon a mineral or  
5 its proceeds until the identity of the proceeds as such is lost.

6           22.     Section 47 of AB 6 violates NRS 361.075 which provides that unpatented  
7 mining claims shall be exempt from taxation.

8           23.     Section 47 of AB 6 violates the provisions of Chapter 361 of the Nevada Revised  
9 Statutes which prescribe the lawful manner of assessment of value of real property and the  
10 imposition of ad valorem real property taxes.

11           24.     Because Section 47 of AB 6 violates Sections 1 and 5 of Article X of the Nevada  
12 Constitution, Section 47 of AB 6 is unconstitutional and void; because Section 47 of AB 6  
13 violates NRS 361.075 and other provisions of Chapter 361 of the Nevada Revised Statutes,  
14 Section 47 of AB 6 is unlawful and invalid.

15           25.     A justiciable controversy exists between Plaintiff and the defendants which  
16 controversy is ripe for judicial determination.

17           26.     Plaintiff seeks and is entitled to a declaratory judgment declaring that Section 47  
18 of AB 6 violates Article X, Sections 1 and 5, of the Nevada Constitution and is void and  
19 unenforceable against Plaintiff.

20           27.     Plaintiff seeks and is entitled to a declaratory judgment from this Court declaring  
21 that Section 47 of AB 6 violates the provisions of Chapter 361 of the Nevada Revised Statutes  
22 and is invalid, unlawful and void and unenforceable against Plaintiff.

23           28.     Plaintiff has been compelled to retain counsel and to incur attorney's fees and  
24 costs in this action, and Plaintiff is entitled to recover such attorney's fees and costs against  
25 defendants as allowed by law.

**Second Claim for Relief  
Injunctive Relief**

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2           29. Plaintiff incorporates by reference paragraphs 1 through 28 of this Complaint.

3           30. Subsection 5 of Section 47 of AB 6 declares that the county recorder shall on or  
4 before the fifth working day of each month deposit with the county treasurer all amounts,  
5 penalties and interest imposed pursuant to Section 47 of AB 6 which are collected during the  
6 preceding month, and that the county treasurer shall quarterly remit all monies so collected to  
7 the State Controller which shall place the money in the State General Fund; the provisions of  
8 Chapter 227 of the Nevada Revised Statutes authorize and direct the State Controller to keep  
9 and maintain accounts of all monies due to the State of Nevada and the provisions of Chapter  
10 226 of the Nevada Revised Statutes authorize and direct the State Treasurer to receive and keep  
11 all money of the State of Nevada which is not expressly required by law to be received and kept  
12 by some other person and to keep a just, true and comprehensive account of all monies received  
13 and disbursed by the State Treasurer; by virtue of the provisions of Chapters 226 and 227 of the  
14 Nevada Revised Statutes, the State Controller and the State Treasurer are the officers of the  
15 State of Nevada charged with the collection and accounting for the amounts to be paid by the  
16 owners of unpatented mining claims in accordance with Section 47 of AB 6..

17           31. Subsection 6 of Section 47 of AB 6 declares that the State Controller shall take  
18 such action as may be necessary to insure that the amounts, penalties and interest imposed  
19 pursuant Section 47 are paid in full.

20           32. Subsections 5 and 6 of Section 47 of AB 6 instruct the State Controller to take  
21 actions to enforce an unconstitutional, unlawful and void statute.

22           33. Plaintiff seeks an injunction maintaining the status quo and preventing the State  
23 of Nevada and all of its legal subdivisions, including the offices of the county recorder of Elko,  
24 Esmeralda, Mineral and Pershing Counties, and the State Controller and the State Treasurer  
25 from taking any action pursuant to Subsection 5 and 6 of AB 6 until such time as the



1 Dated August 11, 2010.

2 Erwin & Thompson LLP

3  
4 By Thomas P. Erwin  
5 Thomas P. Erwin  
6 State Bar No. 951  
7 One E. Liberty Street, Suite 424  
8 P.O. Box 40817  
9 Reno, Nevada 89504  
10 (775) 786-9494  
11 Attorneys for Plaintiff  
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3 IN THE FOURTH JUDICIAL DISTRICT COURT

4 IN AND FOR THE COUNTY OF ELKO

5 CLAREMONT NEVADA MINES LLC, a Nevada  
6 limited liability company,

7 Plaintiff,

8 vs.

9 STATE OF NEVADA, KIM WALLIN, in her capacity  
10 as the Nevada State Controller, KATE MARSHALL,  
11 in her capacity as the Nevada State Treasurer, and  
12 DOES 1-10, inclusive,

13 Defendants.

Case No. CV-C-10-699

Dept. No. 1

14 **SUMMONS**

15 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
16 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 45 DAYS. READ**  
17 **THE INFORMATION BELOW VERY CAREFULLY.**

18 A civil complaint or petition has been filed by the Plaintiff against you for the relief stated in that document  
19 (see complaint).

20 The object of this action is for declaratory relief that Section 47 of Assembly Bill 6 enacted by the Nevada  
21 Legislature which became effective on March 12, 2010, is unconstitutional and void and for injunctive  
22 relief to enjoin enforcement of Section 47 of Assembly Bill 6.

23 1. If you intend to defend this lawsuit, you must do the following within 45 days after service of this  
24 summons, exclusive of the day of service:

25 (a) File with the Clerk of this Court, whose address is shown below, a formal written answer to the  
26 complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and:

27 (b) Serve a copy of your answer upon the attorney for plaintiff whose name and address is shown  
28 below.

2. Unless you respond, a default will be entered upon application of the Plaintiff and this Court may enter  
a judgment against you for the relief demanded in the complaint or petition.

Dated August 12, 2010

Issued on behalf of Plaintiff:

Thomas P. Erwin  
One E. Liberty Street, Suite 424  
Reno, NV 89501  
(775) 786-9494

WIN SMITH  
CLERK OF COURT

By 

Deputy Clerk

Date 8/12/10

Elko County Courthouse  
571 Idaho Street, 3rd Floor  
Elko, Nevada 89801