

PROPERTY CLAIMS TO SPACE RESOURCES, THE LAW, AND THE FUTURE OF PROPERTY RIGHTS IN SPACE.

ABSTRACT

The presentation will briefly review a property claim that was made, and the lawsuit that followed. Then discuss the OST of 1967 and the Moon Treaty in relation to private property claims. Continues with speculation on how officially recognizable claims may be established; and in summary, outlines the most likely answer to the question of private property in space.

INTRODUCTION

I'm Gregory Nemitz. It was I who sued NASA and the US government over my property right to asteroid 433 Eros. My claim to 433 Eros was based in the first tenth of property law, which is ownership prior to actual possession. Centuries of law recognizes that a common law claim to something can be valid prior to possession.

The primary purpose of the lawsuit was to get an official determination from the U.S. government about property rights in space. The secondary goal was to move forward the international conversation about that topic.

The first goal failed. The federal court and the appeals court declined to examine my claim for Eros and granted the state's Motion to Dismiss on a technicality, "... dismissed as a matter of law for lack of a

cognizable legal theory.” The issue of just how someone can make an officially recognizable claim to space resources was not adjudicated.

The second goal was a success. In the last decade many aerospace themed conference had a space property rights discussion or panel.

THEN AND NOW

It is important to recall the era of when the OST of 1967 was drafted and ratified. It was the height of the Cold War and the two competing ideologies, Capitalism vs. Communism were pitted against each other in this arena. I have read the minutes of the deliberations that enacted the OST/67, it is obvious that the USA never intended to abandon Capitalism above the Earth's atmosphere.

The OST/67 does not prohibit private property claims for resources in space. That is obvious because the later Moon Treaty did specifically try to prohibit such claims. *Ipsa facto*, if the OST/67 did prohibit claims; then the Moon Treaty would not need to attempt to do that. The Moon Treaty was not ratified by the USA, or most other nations.

However, that was then, this is now. The politics of the world are very different today, compared to what it was in 1967. Today, in the United States, a public policy driven democracy has usurped the USA's original republican form of representative government; which was carefully designed to protect the rights and property of individual people. The majority of the population now receives government

checks and benefits. That majority does vote for their collective self-interest by constantly increasing their “fair share”. They will continue to vote that way until the political system collapses. That is the way all historical democracies have failed.

The public policy driven governments will not allow private claims to space resources because the majority of voters will cling to the concept that those resources belong to everyone, and are the “Common Heritage of Mankind”. That majority of voters will make sure that space resources will not be the property of those who risk capital and work for profit.

THE LAW TODAY

I have continued my studies about United States law, personal rights, and the outcomes of many court cases regarding personal rights.

1.) Court actions are viewed by the US federal courts as civil and/or commercial, and are reviewed and adjudicated under statute law. The common law is lost to the American people. There are no real actions in equity, as was a century ago, or even 50 years ago.

2.) The U.S. federal courts cannot recognize an individual as a Preamble Citizen with constitutionally protected Rights.

3.) The U.S. federal courts can only “see” 14th Amendment citizen/subjects, who are conferred with revocable immunities and

privileges, and do not retain unalienable rights. All U.S. citizens are mere subjects under U.S. statute law. The sad truth is that you abandoned and lost your unalienable rights when you volunteered to accept and use the Social Security Number and contract that the government assigned to your name. In short, no U.S. court will officially recognize an individual's inherent and unalienable right to declare a claim of original property to any natural objects in space.

4.) No government can allow recognition of any claims a corporation might make to property in space resources. The OST/67 prohibits those corporate claims because corporations, and other limited liability charters, are merely creations of the State. They exist completely under the State and its treaties, and thus automatically do invoke the OST clause of no national sovereignty over areas in space.

GOVERNMENT TODAY

In principle, the very foundation of the representative form of government resides in the social contract among those governed, which allows their government to protect their individual and property rights.

By officially refusing to respect private property claims to space resources, made by individuals with an inherent Right to do so, the governments also refuse to uphold the foundation principle of government by the consent of the governed.

Because government and treaties make private ownership of private property in space illegal, or not officially recognizable, they already have lost their legitimate footing to be a government of, for, and by the people who view and develop Space as a Frontier.

MOVING FORWARD

Law follows the actions of people, it does not lead. I think we should focus our efforts to achieving human-tended space resource extraction projects and let the law be developed to follow that lead. Those persons, who arrive to the off-Earth places containing resources, will be the society that will someday define and establish the laws for protecting off-Earth property rights.

Laws which protect property rights are primarily instituted to prevent theft and destruction. Space resource collection and utilization is presently in its infancy. No, it is actually unborn at this time (2012). There are not yet any pirates and vandals preying upon claimed natural space resources.

So what can be done in the near future about property rights in space? Individuals and corporations can stake and publish their reasonable claims to space resources. They can do this with the intent to grandfather their claims for eventual recognition when a government is formed by the people living in space at some future date.

One early method to stake a reasonable claim for grandfathering may be that a lander has a means to imprint the regolith with an identifying mark of the claimant, as Steve Durst proposes. That may be an action which a future property law, as developed by a space based society, may take notice of and recognize.

A lander which uses a radio beacon transmitting the particulars of the property claim could be a method to declare and stake a recognizable claim, which eventually may be recognized by a government by and for people working and living in Space.

In conclusion, today it is probably best to just carry forward with the engineering projects aiming to extract and use space resources and not worry too much about property rights. Space is vast and there aren't any neighbors vying to steal your property, so don't worry too much about it.

In closing, I remind you of the old Zen rubric:

“It is easier to receive forgiveness than permission.”