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MEMORANDUM

To: Dave McCracken, The New 49'ers Legal Fund
From: James L. Buchal
Date: September 23, 2014
Re: Court of Appeals decision in *People v. Rinehart*

Today the California Court of Appeal, Third Appellate District, issued a unanimous opinion generally affirming our theory of federal preemption in the mining context. This is a big win for mining community, which has been attempting for roughly five years, through multiple cases in multiple forums, to secure a judicial ruling on the 2009 moratorium and its successors.

What is especially helpful is that the Court gave great weight to our position that particular regulations might become “so severe that a particular land use [in this case mining] . . . become[s] commercially impracticable” (*Granite Rock, supra*, at p. 587)” (Opinion at 19.) The Court did not adopt the State’s position that only an outright ban of any and all mining might possibly run afoul of federal supremacy, much less its position that there was, in substance, no such thing as federal supremacy in the mining context.

The Superior Court of Plumas County had refused to let Mr. Rinehart present his evidence that the inability to obtain a permit for suction dredging in fact made it “commercially impracticable to exercise [his] . . . mining rights granted to him by the federal government”. (Opinion at 19.) Thus Court of Appeal remanded the case back to Plumas County for a trial on this issue. Mr. Rinehart will now be permitted to testify that mining by hand is not practicable, and we expect he will have an opportunity to present expert testimony as well. A full-blown trial will be more expensive than the initial proceedings.

It is also possible, however, that the State will determine to dismiss the case in what it might call “the interest of justice”. The State might do this because the Court declared that the opinion should not be published, while a second opinion following the trial would be much more likely to be published.

The nonpublished nature of the opinion means, in theory, that other litigants in California are forbidden to cite it in court filings. However, we are entirely confident that the Judge overseeing the coordinated cases in San Bernardino County Superior Court will become aware of the decision, and that it will have a positive effect on the ongoing settlement negotiations. Moreover, under Rule 8.1120 of the California Rules of Court, “any person” may request that an unpublished opinion be published. I would recommend that the Fund and as many other miners and mining entities as possible file requests for publication.

We have appreciated the important and generous support we have received from The New 49'ers Legal Fund, and hope that the Fund will continue support Mr. Rinehart as it becomes necessary to develop a full factual record in the Superior Court of Plumas County. The Fund should be proud of its material contributions toward making a real difference for the mining community in California.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. M. Buchal', written in a cursive style.

James L. Buchal