
Legal Update

The CBD Submits Briefing Opposing Rinehart

Following the Western Mining Alliance and Pacific Legal Foundation briefing last month supporting Brandon Rinehart's case, the environmentalists responded with their own briefing in opposition.

The environmentalists have suddenly realized what's at stake in the Rinehart case. If Rinehart wins then suction dredging is open across the state with no regulations. They're worried we might once again regain some freedom they took from us.

When did the lack of regulations in itself become something so bad? Is the lack of regulations by itself a violation of law? Have we become so used to being regulated that when the regulations go away the fear of people is overwhelming?

Even for those of you with no interest ever of putting a suction dredge in the water, the real issue is about a small minority of elitists continuing to chip away at basic freedoms we once held. We are imposing controls on people's lives because other people, who believe they are much smarter, said so.

We've caught the environmental groups before misleading the public and the courts, but this recent briefing is beyond the pale.

We know they'll do whatever they can get away with, but we shouldn't allow them to get away with convicting a young man of criminal activity because they misrepresent the truth.

The CBD briefing provides a crystal clear example of why we must win the CEQA case and have the 2011 SEIR discredited and thrown out. The 2011 SEIR is a clear abuse of the process and amounts to nothing more than an attempt to do the bidding of environmental groups at our expense.

The Rinehart Case

In 2009 the state of California banned dredging by saying it was harming the environment. This ban was led by an environmental group with close ties to legislators. In this case it was state senator Wiggins, who later resigned for reasons known to most of you, but we'll not cover them here. The environmental groups knew how easy it was to introduce legislation on any

liberal cause and get it pushed through a legislature with a super majority of democrats.

Every single democrat voted for the ban and every single republican voted against it.

The initial ban was supposedly put in place to protect the environment until the updated environmental review was completed. We know what happened next, but let's go into a little more detail by looking specifically at Rinehart's case.

The 2011 Environmental Impact Report found no significant effects on Rinehart's claim. It was open for dredging. Rinehart was convicted of illegally dredging on a his own claim, on federal land, after an environmental review found there was no environmental harm.

Page 3-38 of the Final SEIR provides Rinehart's claim is open for dredging as a category "D". Open to dredging July 1st to January 31st. If you go to Appendix L of the SEIR you find the only restriction on Rinehart's river is the "Foothill Yellow Legged Frog" which is neither threatened or endangered. In fact, after an exhaustive 2 year review, which cost \$1.5 million, Rinehart's claim was found to be open for dredging, and every environmental effect was found to be fully mitigated.

In the CBD briefing they argue that "decriminalizing" suction dredging would lead to massive environmental destruction and the court should uphold Rinehart's conviction. "Amici seek to provide this Court with the broader context for the implications of finding preemption and overturning Appelants conviction. Reversing the decision of the lower court would effectively decriminalize suction dredge mining without a permit in California."

This is the heart of the issue. Is Brandon Rinehart a criminal by proceeding to mine, as authorized by Congress and the US Forest Service? Of course we want to decriminalize mining and allow miners to return to working their claims.

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The CBD uses three examples in their briefing: The 9th Federal Circuit Court ruling last year against the New 49ers; the 2011 Suction Dredge SEIR and the case known as Granite Rock, so let's address their arguments by pointing out where they are misleading the court.

The 9th Circuit Court Karuk Decision

They mislead the court on the Karuk 9th Court Ruling by stating the 9th Court required ESA consultation for suction dredging. The 9th Court Ruling merely said the USFS must conduct coordination as required by the ESA Section 7 when a Notice of Intent or Plan of Operations is filed. It **Did Not** say the ESA Section 7 applied to suction dredging. They're twisting the wording. The law applies to the NOI independent of the activity. The ruling wasn't about suction dredging, it was about the ESA and NOIs. If a fisherman filed a NOI it would apply to him as well.

The vast majority (probably 95%) of suction dredging operations, including Rinehart's, don't file NOIs because they are considered by the Forest Service as *de minimus* operations. The New 49ers filed NOIs because they were running so many dredges in one location.

Granite Rock

The CBD attempts to misconstrue the decision in the Granite Rock and skew the decision in their favor. Granite Rock didn't give the states the authority to prohibit mining, but this is what the CBD says, "Appellants ask this Court to effectively overturn the U.S. Supreme Court's decision in California Coastal Commission..."

- (1) Granite Rock was a facial challenge to whether the state could require any environmental permitting.
- (2) The state had not prohibited the operation, merely required a permit.
- (3) Importantly – this case turned on the Coastal Zone Management Act where Congress specifically provided the states

the authority to implement the act. Congress has never provided the states the authority to enact the Federal Mining Law of 1872. There's a huge difference between prohibition and regulation.

We've seen time and again examples of the collusion between the state and environmental groups. It's apparent to us the state, and government in general, has been taken over by leftist environmentalists who do the bidding of the environmental groups.

An example of this collusion appears on page 2 of the briefing where the CBD repeats the same words the state uses saying we can continue mining with a gold pan and therefore we're not prohibited from mining. However, we love their wording because they go one step further and essentially just call us bald face liars for saying we can't mine... "Patently false premise that Appellant is prohibited from mining."

We see this comment again and again from the state. If Rinehart isn't prevented from mining, then what form of mining would be acceptable. It is widely understood when you file a placer claim on a river, you intend to mine it, in fact to maintain your claim you must show the intent to mine it. What methods of mining his claim aren't prohibited? Can he use a bucket line dredge? Can he use a bulldozer? Can he drain the water so he can use above ground techniques? What method isn't prohibited?

The Big Lie, The SEIR

The environmentalists have seized on the shoddy mercury research in the SEIR to center their attack on dredging. It's bad enough the research was so poor even the California Department of Fish and Wildlife says they didn't use it (but they did), but the CBD actually goes one step further.

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Page 6. *“Numerous state and federal government studies have traced the causal connection between legacy gold mining, contemporary suction dredge mining, and elevated mercury in fish, wildlife and humans.”*

This is false. They cite as evidence of “numerous” studies page 4.2-41 and 4.2-52 (of the 2011 SEIR). If you go to these two pages it does nothing of the kind. It doesn’t cite “multiple studies” and it doesn’t establish a causal link. They are intentionally misleading the court. The reference they cite is simply to the same discredited mercury report which didn’t establish a causal link and there are in fact no studies which establish a link between dredging and mercury levels.

They intentionally mislead agencies, the public and now the courts.

This is a big deal. You see when you write an official court document intentionally misleading the court in a criminal case we’ve got a problem. Of course they knew their cites said nothing of the kind about establishing causal links, but they use it anyways.

So what’s the price to be paid? This case is actually about an appeal of a criminal conviction and we’ve got a bunch of environmental groups interfering in justice to achieve their own goals. Let’s say the judge believes this without looking at the cites, then we have a young man who remains criminally convicted because of this. The fact is there is no link, and Brandon’s claim was found to be approved for use of a suction dredge, but he was charged and convicted nonetheless.

We challenged this study in the SEIR and in the Final SEIR the department acknowledged the USGS mercury experiment was so flawed they couldn’t use the results in the Final SEIR. In fact, there are no studies which show a causal link, and there is absolutely no evidence of this mercury causing elevated levels in humans. The exact opposite is true and we’ve previously reported in this

newsletter on multiple studies which show no mercury effects from suction dredging.

Page 6 and Page 7 of their briefing they continue with this incorrect information by trying to reinforce their earlier attempts to mislead and actually reinforce it with further misinformation.

“The mercury levels in fish taken from California’s streams and rivers where historic mining occurred are generally above critical threshold levels under state regulations for toxics and human health. The levels are so high they pose human health risk.”

They cite USGS p.5 as the source for this information.

However, this is directly refuted by the State’s own studies which were the most comprehensive studies every conducted in California on this very issue. The State Water Board found the exact opposite, that all rivers in gold country where historic mining took place had fish with levels of mercury well below threshold criteria. The Water Board did two studies, in the first study (Trout in California) they examined reservoirs and lakes specifically in gold mining country to address the very issue the CBD raises. They found not one lake or reservoir warranted listing. The second study found every single river in gold mining country was well below threshold criteria.

The actual reports do not support their claims.