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October 21, 2014

BY FEDERAL EXPRESS

Hon. Justice Harry E. Hull, Jr.
Hon. Ronald B. Robie
Hon. Andrea Lynn Hoch
California Court of Appeals
Third Appellate District
914 Capital Mall
Sacramento, CA 95814

Re: *The People v. Rinehart*
CA No. C074662
Plumas County No. M1200659

Dear Honorable Justices:

Appellant Brandon Rinehart writes briefly in opposition to the request of amicus curiae Karuk Tribe *et al.* to modify the Court's opinion. The *amici* raise issues concerning the title to the land on which Respondent's federally-issued mining claim is located. *Amici's* suggestion that "this issue has not yet been briefed or argued before . . ." is utterly false and their position is frivolous.

As the photographs of the mining claim (Clerk's Transcript ("CT") at 80-83) make clear, this case involves a tiny stream clogged with enormous boulders and could not remotely be termed navigable. The People nonetheless repeatedly raised the issue before the trial court before finally, and wisely, declining to press it further. Initially, the People responded to the demurrer by raising the issue (CT48), and Appellant filed argument in reply (CT60-61).

Thereafter, the issue arose again when Appellant moved to limit the evidence at trial to exclude the issue and other collateral distractions raised by the People in opposition to the demurrer. As Appellant explained to the trial court:

"There can be no reasonable dispute that defendant holds a federally-issued mining claim which the United States issued based on its title to the land. It is odd indeed to see the State insisting that in this misdemeanor prosecution, to which the United States is not a party, they are entitled to litigate the question of title to the land upon which defendant's mining claim is situated. This runs afoul of the most

elementary rules of civil procedure and due process of law. *See, e.g.*, Code of Civil Procedure § 389 (describing indispensable parties). The United States cannot be brought into these Superior Court criminal proceedings, and there is no reason for this Court to question the United States' title of the National Forest.

“This rule was confirmed in the case of *Livermore v. Beal* (1937) 18 Cal.App.2d 535, which reviewed numerous cases in which parties sought title adverse to the interests of the United States, which had not consented to be sued. These cases, said the court, “establish beyond controversy that under the circumstances surrounding these cases, and the facts of which the court, as we have said, must take judicial knowledge, show that the United States is a necessary party, and therefore that the action must fail, in view of the fact that the United States cannot be sued.” *Id.* at 545. So too must the State's attempt to establish title to defendant's mining claim here fail. *See also Monolith Portland Cement Co. v. J.R. Gillbergh* (1954) 129 Cal.App.2d 413, 419-20.

“Were the State to pursue its quiet title claims, it would be required to proceed under 28 U.S.C. § 2409a in federal court. 28 U.S.C. § 1346(f). And that would be a waste of time, because the State would only take the land subject to defendant's mining claim, which would invoke the same issues of federal mining policy. *See* 28 U.S.C. § 2409a(j). The Court might reasonably consider the State's invocation of this issue to be sufficiently frivolous to cast doubt upon the State's positions generally.”

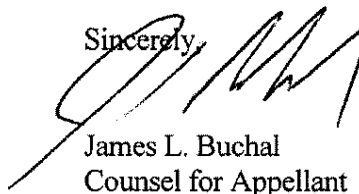
(Defendant's Memorandum in Support of Motion to Limit the Issues and Evidence at Trial, Etc., Feb. 1, 2013.) *Livermore* and other cases also stand for the proposition that the Court may take judicial notice of the official records of the U.S. Bureau of Land Management which provided proof, conclusive for these proceedings, that Appellant owned a federal mining claim on federal land. (*See* CT54 (judicial notice argument before trial court, citing cases).)

The trial court entered no formal ruling on Appellant's motion to limit the issues, but by the time of trial, the People had determined, as required by the above law, to pursue this argument no further.

There is a great deal of other seriously misleading argument in the letter of the *amici*, but the jurisdictional question alone should resolve this issue. To the extent the Court would seek a more detailed response—and it need not—Appellant stands ready to provide it.

Appellant respectfully requests that the Court reject the request for modification filed by the *amici*.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Buchal', is written over the word 'Sincerely,'.

James L. Buchal
Counsel for Appellant

DECLARATION OF SERVICE

I, Carole A. Caldwell, hereby declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal, LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

On October 21, 2014, I served the attached letter of appellant in response to amicus curie the Karuk Tribe *et al.* on the parties in said action as follows:

(X) (First Class US Mail) by placing a true copy thereof enclosed in a sealed envelope, addressed as shown below:

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