

Suction gold dredging in California update, Court of Appeals orders People v. Rinehart opinion to be published!

by Scott Harn, Editor/Publisher, ICMJ's Prospecting and Mining Journal, **10/08/2014**

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[detail.php?id=264&keywords=Suction_gold_dredging_in_California_update:_Court_of_Appeals_orders_People_v._Rinehart_opinion_to_be_published](http://www.icmj.com/news-detail.php?id=264&keywords=Suction_gold_dredging_in_California_update:_Court_of_Appeals_orders_People_v._Rinehart_opinion_to_be_published)

As we mentioned in our [10/01/2014 update](#), Brandon Rinehart was successful in the appeal of his conviction for suction dredging without a permit.

The judge who presided over Rinehart's original case would not allow him to argue that federal mining laws preempt state mining laws. The Third Court of Appeals in California ruled the trial court erred; the federal preemption argument is relevant in this case and must be allowed. The case was remanded back to the lower court for trial.

In simple terms, if the case goes to trial, Rinehart will argue that California cannot preempt federal mining laws by prohibiting the only economical method of mining for gold on his federal mining claim -- suction dredging.

Rinehart is being represented by attorney James Buchal.

The opinion from the Third Court of Appeals was certainly a "win" for Rinehart, but that opinion needed to be published before it could be cited in state courts. State and federal law are different. While unpublished opinions can be used in federal courts, California law still forbids lawyers from citing unpublished opinions in state courts.

In our previous update, we put out a request for miners to send letters to the Third Court of Appeals to encourage them to publish their opinion in People v. Rinehart. While dozens of the letters were denied for missing signatures or other errors, over 250 letters were accepted and entered into the court record. As a result of your efforts, the Third Court of Appeals has agreed to publish the Rinehart opinion.

The court record shows the following entry on 10/08/2014:

"Order granting publication filed. BY THE COURT: HULL, Acting P.J., ROBIE, J., HOCH, J."

Why this is important:

The State of California could have dismissed the previous charges against Rinehart to avoid losing the preemption argument and setting case precedent in favor of suction gold dredgers. Now that the Third Court of Appeals opinion will be published, we no longer have to worry about the State of California dismissing the Rinehart case.

The People v. Rinehart opinion can now be used by attorneys representing suction dredge miners in the consolidated court cases in San Bernardino County, and Judge Gilbert Ochoa will have to follow the published opinion from the Third Court of Appeals.

What this means for suction dredgers:

We are getting closer to getting back in the water. Mandatory Settlement Hearings are continuing in the consolidated suction dredging court cases in San Bernardino. Judge Ochoa is the mediator for negotiations between the suction gold dredging plaintiffs, mining attorneys, the Department of Fish & Wildlife, and attorneys representing environmental organizations and the State of California.

Getting the Rinehart opinion published is a huge step in the right direction, but there is still work to be done. The Mandatory Settlement Hearings will continue in San Bernardino on November 14 in front of Judge Ochoa, and you can be certain that attorneys representing the miners will give the judge a copy of the Rinehart opinion.

What can I do:

Public Lands for the People has been spearheading this effort. We here at the *Prospecting and Mining Journal* have donated tens of thousands of dollars to PLP. You can lend a hand by [getting a PLP membership](#) or by buying some of the [donated items for sale on their eBay page](#).

Thank you for your continued support!

Link to the [Third Appellate Court case file for Brandon Rinehart](#)

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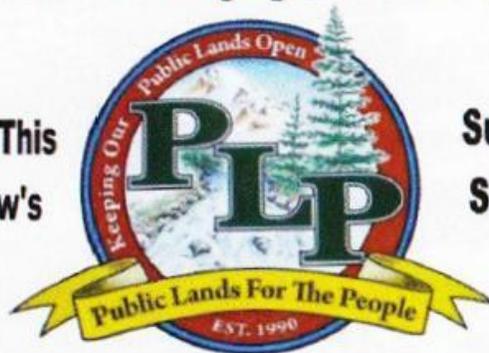
PH (831) 479-1500 • FAX (831) 479-4385

scott@icmj.com

www.icmj.com

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