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MEMORANDUM

JOINT DEFENSE PRIVILEGED COMMUNICATION

To: Interested Parties
From: James L. Buchal
Date: September 15, 2014
Re: Oral Argument of Rinehart Case

This morning I traveled to Sacramento to argue the appeal of Brandon Rinehart's criminal conviction before the Third District Court of Appeals. There were three Justices, Hull, Robie and Hoch, two of whom, Hull and Robie, were quite active in questioning both sides. It is always difficult to predict the outcome of a case based on the conduct of the Justices during an oral argument, but I left the argument feeling that the panel would not likely affirm Rinehart's conviction; but rather reverse it or send the case back to Plumas County for further factfinding.

All three Justices appeared to reject the State's position that there was no federal preemption at all, such that the State was empowered to ban all mining if it so chose. The Justices questioned the State's attorney quite vigorously about this, and Justice Hull even disparaged the recent *Pringle* case as being based on "pretty thin" analysis.

At the same time, however, all the Justices seemed concerned that the Superior Court in Plumas County had not afforded Rinehart an opportunity to present witnesses and testimony concerning the degree to which a ban on suction dredge mining effectively barred commercial exploitation of the claim. Justice Robie, however, seemed concerned that federal preemption should somehow turn on the degree of interference with the commercial practicability of mining a claim, an analysis that would depend, among other things, upon the price of gold.

The Justices, particularly Justice Robie, also seemed to have been potentially confused by the State's diabolical strategy of concealing the permit bans within a complex series of statutes that can be misrepresented as mere temporary delays while permit conditions are developed. The State noted that on the precise date Rinehart was cited, the ban on permit issuance was still set to expire in 2016 (it was not until later in June 2012 that the statute took its current form). The oral argument was helpful in characterizing SB 670 and its successors

as *per se* unreasonable restrictions on issuing permits, rather than measures to assist in permit development.

After the argument, the State's attorneys privately offered their assessment that the most likely outcome is that the case is remanded back to Plumas County for further development of the facts on how a ban on issuing suction dredge mining permits "materially interferes" with development of the claim. My own view is that there is at least as good a chance that the Court will focus on how this statute is not really regulatory at all, the approach taken in the *Lawrence County* case, which would allow them to reverse the conviction without creating a significant workload for the lower courts.

Sincerely,

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

James L. Buchal