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MEMORANDUM

To: Dave McCracken, The New 49'ers Legal Fund
From: James L. Buchal
Date: January 9, 2018
Re: *People v. Rinehart* (U.S. Supreme Court)

By now you have heard that the Supreme Court denied Brandon Rinehart's petition for *certiorari* yesterday. This was not entirely unexpected, because the Justice Department did not support Supreme Court review. It is by now common knowledge that the Justice Department is the focus of massive resistance to President Trump in the Executive Branch, and in a swamp full of alligators, the new Administration has not had enough time to bring the Justice Department under control to promote its policies. We do see very encouraging progress with respect to natural resources and the public lands from the other cabinet-level agencies, which makes us hopeful that the President will eventually get the Justice Department in line.

In addition to advancing interpretations of federal mining law that were entirely antagonistic to President Trump's goals of putting Americans back to work through resource development on the public lands, the Justice Department had argued that Rinehart's case was a "poor vehicle" to test the constitutionality of state-law restrictions on mining because, among other things, California law was only "temporary." The Justice Department noted that there was (and is) a challenge to Oregon's restrictions pending before the Ninth Circuit in *Bohmker v. Oregon*, No. 16-35262 (appeal filed April 7, 2016). That case is finally set for argument on March 8, 2018 in Portland.

No matter which way the Ninth Circuit decides *Bohmker*, a petition for *certiorari* review is likely to be filed with the U.S. Supreme Court. If the Oregon miners prevail, the Ninth Circuit's ruling will eventually come to undermine the California restrictions, though resistance is to be expected. If the Ninth Circuit rules against the miners—entirely possible since their review is still contaminated by the Obama Administration's anti-mining briefs—there will be a second chance to petition for U.S. Supreme Court review. The question how much authority left-leaning States have to prevent mining on the federal lands will not evade review in the Supreme Court forever; it is a question of national importance that the high court must eventually answer.

As President Trump's efforts to foster all sorts of natural resource development on the federal lands come under continuing attack from left-controlled states and their allies, the issues of federal supremacy on federal lands should rise higher on the Administration's radar in coming months. There is much more that the small-scale mining community can do to inform the Attorney General and President Trump that there remain individuals in the Trump Administration that are arguing against the very things Trump is trying to accomplish.

I remain hopeful that even if the Oregon miners do not prevail in *Bohmker*, the swamp-draining at Justice will proceed to the point where mineral development on the federal lands will be supported at the Supreme Court next time around.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Buchal', with a stylized flourish at the end.

James L. Buchal