



PACIFIC LEGAL FOUNDATION

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Honorable Presiding Justice
and Associate Justices
California Court of Appeal
Third Appellate District
914 Capitol Mall, 4th Floor
Sacramento, CA 95814

Court of Appeal, Third Appellate District
Dana G. Sorenson
B. J. ...

Re: *The People v. Brandon Lance Rinehart*, Case No. C074662
Request for Publication of Opinion filed September 23, 2014

Dear Honorable Justices:

Pursuant to Rule of Court 8.1120(a), Western Mining Alliance and Pacific Legal Foundation request publication of this Court's opinion filed on September 23, 2014, in *The People v. Brandon Lance Rinehart*, Case No. C074662.

Statement of Interest

Western Mining Alliance (WMA) was formed in 2011 in response to the then-proposed suction-dredge moratorium at issue in *Rinehart*. It was organized to represent the interests of independent miners throughout the West on moratoria such as this one and other environmental regulations frustrating their ability to work their claims. Like *Rinehart*, many of WMA's members are threatened with criminal punishment if they attempt to mine their federal claims. WMA promotes a more even-handed approach to environmental regulation which pursues the goals of environmental protection while being attentive to the costs on the individual. Toward that end, it engages in public information campaigns, political advocacy, and litigation.

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized under California law for the purpose of litigating matters affecting the public interest. PLF's work is supported by the contributions of individuals who want to ensure strong protections for private property rights and a balanced approach to environmental regulation. Since its founding in 1973, PLF has been a leading voice on these issues, and has participated in numerous cases in the California courts and the United States Supreme Court. Its environmental practice focuses on keeping the administration of environmental law within statutory and constitutional bounds.

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The Rinehart Opinion Meets the Standards for Publication of Rule of Court 8.1105(c)

The *Rinehart* opinion meets the standards for publication because it “establishes a new rule of law,” “explains . . . an existing rule of law,” “reaffirms a principle of law not applied in a recently reported decision,” and “involves a legal issue of continuing public interest.” Rule of Court 8.1105(c)(1), (3), (6), (8).

The opinion should be published because it establishes a new rule of law. For the first time, a California court has held that a de facto ban on mining methods that would make it “commercially impracticable” to exercise mining rights is preempted by federal mining law. Slip op. at 16-19; see also *South Dakota Mining Ass’n, Inc. v. Lawrence County*, 155 F.3d 1005 (8th Cir. 1998).

Also, the opinion provides important clarification about the scope of *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572 (1987). Slip op. at 19. In particular, the opinion clarifies the distinction between permissible “environmental regulations” and preempted “land use planning.” *Id.*; see *Granite Rock*, 480 U.S. at 587.

Additionally, there have been no published opinions addressing the preemptive effect of federal mining law on California regulations since the United States Supreme Court’s decision in *Granite Rock*. The first case to follow up on *Granite Rock*, particularly when it provides such important background on mining law and clarification to that precedent, should be published to provide guidance for subsequent cases.

Finally, the decision involves an important legal issue of continuing public interest—the legality of the statewide ban on suction dredge mining and the status of federal claims that require such equipment to be mined. For the last five years, the moratorium has prohibited miners from using suction dredges to work their federal mining claims, with no end in sight. See slip op. at 14-15. Forty-five percent of the state is owned by the federal government. See *The Open West, Owned by the Federal Government*, N.Y. Times, Mar. 23, 2012.¹ The streams that flow across this federal land contain federal mining claims or potential claims that currently cannot be mined because of the state’s moratorium. In addition to this prosecution, the moratorium has generated civil lawsuits. See *Suction Dredge Mining Cases*, Super. Ct. San Bernardino County, No. JCPRS4720. Because of the moratorium, many of WMA’s members have been unable to productively mine their claims and some have participated in the ongoing civil litigation. If published, the *Rinehart* opinion will provide important clarity to miners who hold federal claims and to lower courts resolving similar preemption challenges.


¹ Available at www.nytimes.com/interactive/2012/03/23/us/western-land-owned-by-the-federal-government.html (last visited Oct. 2, 2014).

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Conclusion

For these reasons, the *Rinehart* opinion meets the standards for publication. WMA and PLF respectfully request that the Court certify the opinion for publication.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jonathan Wood". The signature is written in black ink and is positioned above the printed name.

JONATHAN WOOD
Attorney

DECLARATION OF SERVICE BY MAIL

I, Tawnda Elling, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On October 3, 2014, true copies of REQUEST FOR PUBLICATION OF OPINION FILED SEPTEMBER 23, 2014, were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 3rd day of October, 2014, at Sacramento, California.


TAWNDA ELLING