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MEMORANDUM

To: Dave McCracken, The New 49'ers Legal Fund
From: James L. Buchal
Date: January 13, 2015
Re: Another Great Victory for Our Cause

Yesterday afternoon, January 12, 2015, Judge Ochoa released his opinion on the pending motions for summary judgment on federal preemption in the coordinated suction dredging cases in San Bernardino County (attached). As expected, the Judge relied heavily upon our recent victory in *People v. Rinehart*, and I am pleased to say he went even further than the Court of Appeals in our favor.

As you may recall, the Court of Appeals was unwilling to grant an outright victory to Rinehart because the trial court had refused to permit Rinehart to make the full case concerning the impact of the California prohibitions. Here, Judge Ochoa carefully reviewed a large mass of evidence submitted by the parties and concluded:

“ . . . there is no triable issue of material fact on the issue of Federal Preemption and [the Court finds] that as a matter of law and in actual fact, that the State’s extraordinary scheme of requiring permits and then refusing to issue them . . . and/or being unable to issue permits for years, stands ‘as an obstacle to the accomplishment of the full purposes and objectives of Congress’ under *Granite Rock* and [constitutes] a *de facto* ban.” (Opinion at 19, 21.)

As a result, it is clear that the State’s refusal to issue permits is unlawful.

As an additional bonus, the Court also did not include any finding, requested by the State, Tribe and environmentalists, that “there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation” (Code of Civil Procedure § 166.1), a finding which would have enhanced our opponents’ ability to seek an immediate appeal. Our opponents may still seek discretionary appellate review of Judge Ochoa’s decision, but that review is unlikely to be granted so long as the Supreme Court does not disturb the Rinehart decision (we should find out about that by February 13th).

The Opinion, though it declares the statutory prohibition on permit issuance illegal, does not specifically address the question of how to move forward with permit issuance. In consultation with our allies, we will develop a strategy for seeking further relief from the Court. In the near future, and certainly before our next Court appearance on January 23rd, I will circulate an attorney-client

privileged memorandum to the clients in the San Bernardino cases containing some confidential recommendations about how to proceed.

Sincerely,

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

James L. Buchal