No. S222620

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

BRANDON LANCE RINEHART,
Defendant and Appellant.

Third Appellate District, Case No. C074662
Plumas County Superior Court, Case No. M1200659
Honorable Ira Kaufman, Judge

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF AMERICAN EXPLORATION & MINING ASSOCIATION FILED IN SUPPORT OF BRANDON RINEHART (DEFENDANT/APPELLANT)

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f),[1] American Exploration & Mining Association ("AEMA") requests leave to file the accompanying amicus curiae brief in support of Defendant and Appellant, Brandon Lance Rinehart. Through its amicus brief, AEMA will assist this Court by examining the federal laws that govern mineral exploration and development on federal lands to demonstrate that California's ban on suction dredge mining violates the Supremacy Clause of the United States Constitution.

IDENTITY AND INTEREST OF AMICUS CURIAE

AEMA, formally known as Northwest Mining Association, is a non-partisan, membership, trade association incorporated under the laws of the State of Washington, with its principal place of business in Spokane, Washington. AEMA is also an Internal Revenue Code Section 501(c)(6) non-profit organization. AEMA's purpose is to support and advance the mining-related interests of its approximately 2,300 members; to represent and inform its members on technical, legislative, and regulatory issues; to provide for the dissemination of educational material related to mining; and

[1] Pursuant to California Rule of Court 8.520, counsel for AEMA affirms that no counsel for a party authored this brief in whole or in part and that no party, person, or entity other than AEMA, its members, and counsel made a monetary contribution specifically for the preparation or submission of this brief.

to foster and promote economic opportunity and environmentally responsible mining. AEMA is the recognized national voice for mineral exploration and maintaining access to public lands. AEMA and its members are committed to principles that embody the protection of human health, the natural environment, and a prosperous economy.

Since its creation in 1895, AEMA has been actively involved in all issues that may affect mining operations in the United States. AEMA actively seeks to ensure that regulations and other decisions that affect mining activities on federal lands are lawfully promulgated and implemented. *See generally*, *Northwest Mining Association v. Babbitt*, 5 F. Supp. 2d 9 (D.D.C. 1998); *American Exploration & Mining Association v. Jewell*, No. 14-17352 (9th Cir.). AEMA has a substantial interest in ensuring that, to the maximum extent possible, mineral location and entry remain feasible on all federal lands. To this end, AEMA seeks to ensure that regulatory measures are not so burdensome as to prevent exploration and mineral development. The Court of Appeal *correctly* recognized that federal law encourages the development of the nation's mineral resources and that California's state ban on suction dredge mining stands as an obstacle to accomplishment of the full purpose of federal law. In order to ensure that this Court is appropriately informed about the purpose of the longstanding federal laws governing mining on federal lands, AEMA

respectfully submits this amicus curiae brief in support of Defendant and Appellant.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should hold that California's ban on suction dredge mining, as applied on federal lands, violates the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2. In passing the 1872 Mining Law ("Mining Law"), Congress extended a unilateral offer that grants all persons a statutory right to enter upon federal lands in order to explore for and develop valuable mineral deposits. 30 U.S.C. § 22. Rinehart accepted Congress's offer and made a discovery of a valuable gold deposit within the Plumas National Forest. California has prevented Rinehart from developing his deposit, however, by banning the use of suction dredge mining. California Fish & Game Code §§ 5653, 5653.1.

For over 150 years, the United States has had an official policy of encouraging and facilitating the exploration for and development of the nation's mineral resources on federal lands. The Mining Law accomplishes this objective by providing that "all valuable mineral deposits in lands belong to the United States, . . . shall be free and open to exploration and purchase," which authorizes those that make a discovery of valuable mineral deposits to acquire property interests in the federal lands. Among the property rights acquired by a claimant is the right to develop the mineral resources on a claim. The federal government has continued to

reaffirm the policy of encouraging mineral development since the passage of the Mining Law.

Despite this longstanding federal objective, California has enacted a ban that prevents the exploration for and development of valuable mineral deposits on federal lands. Suction dredge mining is the only way of exploring for developing deposits like the one Rinehart has acquired. Accordingly, California's ban is in conflict with federal law, and must be ruled unconstitutional.

ARGUMENT

I. THE OBJECTIVE OF FEDERAL MINING LAWS IS TO ENCOURAGE DEVELOPMENT OF THE NATION'S VALUABLE MINERAL DEPOSITS.

A. With the Passage of the Mining Law, Congress Encouraged and Facilitated the Development of the Nation's Valuable Mineral Deposits by Authorizing Miners to Acquire Property Interests in the Federal Lands.

For over 150 years, the United States has had an official policy of encouraging and facilitating the development of the nation's mineral resources on federal lands. In 1864, Congress began to debate the federal approach to mining, and the primary concern was how to promote the development of mineral resources in the west. *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1183 (10th Cir. 2006). During a revenue debate, California Senator McDougall made clear that the lack of

mining development was hindering both the federal government and the State of California:

> I suppose two thirds of the area of California is what is called mining land. Not an acre of it has been surveyed. It has not been laid off into sections; it has not been laid off into small parcels, so that individuals can acquire rights to it. . . . The State of California would be twice as strong and twice as populous today if at an early period provision had been made whereby persons seeking rights there could secure permanent and fixed interests.

Cong. Globe, 38th Cong., 1st Session, 2557 (1864). Similarly, Senator Howe from Wisconsin stated during the same debate that "it is the first interest of the public . . . to have this wealth developed and brought into the use of man, and therefore I do not vote for a law to prohibit mining; I do not vote for any enactment that shall discourage the development of this wealth." *Id.* at 2559.

The desire to develop the nation's mineral wealth led to the passage of the Lode Law of 1866. Senator Stewart of Nevada, who introduced the bill, explained the importance of developing mineral resources:

> The increase of the precious metals serves a double purpose. A dollar in gold or silver adds as much to the wealth of the nation, is just as good an export, and will stimulate commerce and enterprise as much, as the choicest products of any country.

Cong. Globe, 39th Cong., 1st Session, 3227 (1866). Accordingly, he proposed a bill that would adopt a "just, liberal, and definite policy . . . toward the miners" and would lay "a solid foundation for large and

increasing yields." *Id.* at 3228. The Lode Law accomplished its objectives by issuing patents to miners who made claims on various mineral deposits and expended labor to develop those deposits. 14 Stat. 251 (July 26, 1866). This same policy was adopted with respect to placer deposits in 1870. 16 Stat. 217 (July 9, 1870).

The Lode Law and the Placer Act failed to adequately resolve many of the issues involving the security of title to mining claims. *High Country Citizens Alliance*, 454 F.3d at 1184–85. As a result, in 1872, Congress passed the Mining Law, which "essentially served to combine and fine tune . . . the Lode Law of 1866 and the Placer Act of 1870 . . . ." *Id.* at 1183; Cong. Globe, 42nd Cong., 2nd Session, at 534 (1872) (California Representative Sargent, member of the Committee on Mines and Mining, stating that the Mining Law does not "change the principles of the law," it only provides extra incentive for miners to "to go down deeper in the earth, to dig further into the hills, and in every way to improve their own condition. . . ."). The Mining Law provides that "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States. . . ." 30 U.S.C. § 22.

The purpose of the Mining Law is reflected in its title: "An Act to promote the Development of the Mining Resources of the United States."

17 Stat. 91 (May 10, 1872). Like the Lode Law and the Placer Act, the Mining Law seeks to increase the Nation's wealth by facilitating development of the Nation's minerals. *See High Country Citizens Alliance*, 454 F.3d at 1183–85. In order to accomplish this objective, the Mining Law extends a unilateral offer that grants all persons a statutory right to enter upon federal lands in order to explore for and develop valuable mineral deposits. *Union Oil Co. of California v. Smith*, 249 U.S. 337, 346 (1919) ("[The Mining Law] extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits. . . .").

In addition, a person who makes a "discovery" of a "valuable mineral deposit" and satisfies the procedures required for establishing the location of the claim becomes the owner of a mining claim, *i.e.*, a constitutionally protected property interest. 30 U.S.C. §§ 22, 23, 26. The United States Supreme Court has held that a mining claim is "property in the fullest sense of the term":

> The rule is established by innumerable decisions of this Court, and of state and lower federal courts, that, when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is 'real property,' subject to the lien of a judgment recovered against the owner in a state or territorial court.

Wilbur v. U.S. ex rel. Krushnic, 280 U.S. 306, 316 (1930); *see also Forbes v. Gracey*, 94 U.S. 762, 767 (1876) (mining claims "constitute very largely the wealth of the Pacific Coast states"). This valuable property right may not be declared forfeited at the whim of any government.[2] *See United States v. North Amer. Transp. & Trading Co.*, 253 U.S. 330, 331-334 (1920) (United States must pay just compensation when it occupies a mining claim); *Cameron v. United States*, 252 U.S. 450, 460 (1920) (the federal government "has no power to strike down any claim arbitrarily"); *Marathon Oil Co. v. Lujan*, 751 F.Supp. 1454, 1462 (D. Colo. 1990), *aff'd in part, rev'd in part on other grounds*, 937 F.2d 498 (10th Cir. 1991) (A mining claim is protected by due process and "cannot be arbitrarily,

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[2] The People argue that the Mining Law indicates that state authority will be preserved. People's Opening Brief on the Merits ("People's Opening Br.") at 14 (citing 30 U.S.C. § 22). Yet, § 22 does not mention state law, and it provides for occupation and purchase of federal lands "under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts. . . ." 30 U.S.C. § 22. Mining districts were districts in which the rules were established by the miners, not state governments. *See United States v. Shumway,* 199 F.3d 1093, 1098 (9th Cir. 1999) ("Thus, instead of following any of the alternative schemes, which might have preserved more government authority or revenue, Congress expressly adopted the 'local customs or rules of the miners.'"). Furthermore, the Mining Law limited what local mining districts could regulate. *See* 30 U.S.C. § 28; *Examination of Title to Unpatented Mining Claims*, 13B RMMLF-INST 5 (1982) ("After 1872, the realm of permissible post-1872 regulation by local rules was restricted to four principal areas . . . ."); Cong. Globe, 42nd Cong., 2nd Session, 2460 (1866) (Nevada Senator Stewart stating that the Mining Law "curtails [mining districts] power of legislation, cuts it down to a very small extent, takes away most of it, takes away anything that can be prejudicial, and prescribes the rule so that their legislation cannot interfere with it.").

unreasonably or unfairly dissolved, terminated or effectively denied at the [government's] election. . . ."); *United States v. Locke*, 471 U.S. 84, 127 (1985).

Furthermore, the Supreme Court and other courts have recognized that the essential stick in the bundle of rights making up a mining claim is the right to mine. *Union Oil Co. of California*, 249 U.S. at 348–49 (An owner of a mining claim has "an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals, even to exhaustion, without paying any royalty to the United States. . . ."); *Forbes*, 94 U.S. at 766–67 (the right to "develop and work the mines, is property in the miner, and property of great value"); *accord Shumway* at 1098–99 (The right of an owner of a mining claim to the "exclusive possession of the land for purposes of mining and to all the minerals he extracts, has been a powerful engine driving exploration and extraction of valuable minerals, and has been the law of the United States since 1866."). Accordingly, contrary to the People's suggestion, the Mining Law does more than simply give permission for citizens to enter federal lands without prosecution for trespass or theft. People's Opening Br. at 13. It contains substantive "specific provisions" that facilitate the development of the Nation's mineral resources. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 634 n.21 (1981) (drawing a distinction between "general expressions of 'national policy'" and substantive provisions of a statute).

B. Federal Laws Passed Subsequent to the Mining Law Reaffirm the Policy of Encouraging Development of the Nation's Valuable Mineral Deposits.

Since the passage of the Mining Law, the federal government has continually reaffirmed its objective of encouraging development of the Nation's mineral wealth. In 1897, Congress passed the Forest Service Organic Act, 16 U.S.C. § 473 *et seq.*, which provides the basis for the Forest Service's regulatory authority, but limits that authority to ensure that the development of mineral resources is not curtailed. Specifically, the Organic Act:

> makes clear that the Forest Service must act consistently with the federal policy of promoting mineral development. Section 1 of that Act precludes the Secretary of Agriculture from taking any action that would "prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof."

California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 598 (1987) (Powell, J., concurring in part and dissenting in part (quoting 16 U.S.C. § 478)).

The Forest Service regulations promulgated pursuant to the Organic Act reaffirm Congressional policy. These regulations strike a balance between environmental concerns and the statutory right to mine in National Forests. *See National Forests Surface Use Under U.S. Mining Laws*, 39 Fed. Reg. 31,317–21 (Aug. 28, 1974). Importantly, the Forest Service recognizes that "prospectors and miners have a statutory right, not mere

privilege . . . to go upon and use the open public domain lands of the National Forest System for the purposes of mineral exploration, development and production." *Id.* at 31,317. When promulgating these regulations, the Forest Service expressly stated that the right to mine "could not be unreasonably restricted." *Id.* Accordingly, The Forest Service's regulations provide that mining operations in National Forests must "be conducted so as, *where feasible*, to minimize adverse environmental impacts on National Forest surface resources." 36 C.F.R. § 228.8 (2015) (emphasis added).

In 1955, Congress again reaffirmed its policy towards mineral development by passing the Surface Resources Act. P.L. 84-167 (July 23, 1955), *codified at* 30 U.S.C. §§ 611-615. The Surface Resources Act dealt with the issue of "sham mining claims used for other purposes." *See Shumway*, 199 F.3d at 1101. The lack of development on these mining claims was a concern for many members of Congress even before the passage of the Mining Law. *See* Cong. Globe, 42nd Cong., 2nd Session, 2459 (1866) (California Senator Cole stating, "My object is to insure good faith in the working of the mines, to prevent their being held by owners an indefinite length of time without working them. . . .").

In order to alleviate this concern, the Surface Resources Act provides that "[a]ny mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor,

for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto." 30 U.S.C. § 612(a). The Act also allows multiple use of other surface uses on a mining claim provided "[t]hat any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as *not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto. . . .*" *Id.* at § 612(b) (emphasis added).

With the passage of the Surface Resources Act of 1955, Congress reaffirmed the objective of encouraging development of mineral resources on federal lands. As True Morse, then-Acting Secretary of the Department of the Agriculture, stated in a letter to Congress:

> The Department of Agriculture desires to encourage legitimate prospecting, and effective utilization and development of mineral resources of the national forests. . . . We would not favor legislation which would interfere with such development of minerals nor work hardship on the bona fide prospector or miner.

H.R. Rep. 84-730, at 21, *reprinted in* 1955 U.S.C.C.A.N. 2474, 2493. Congress also expressed this desire, and recognized that "continual interference by Federal agencies in an effort to overcome this difficulty would hamper and discourage the development of our mineral resources, development which has been encouraged and promoted by Federal mining law since shortly after 1800." *Id.* at 6, 1955 U.S.C.C.A.N. at 2479. Accordingly, Congress struck a balance and limited "the exclusive

possession of mining claimants" vis-à-vis subsequently located claims "to permit the multiple use of the surface resources of the claims prior to the patenting of the claims, so long as that use did not materially interfere with prospecting or mining operations." *United States v. Curtis-Nevada Mines, Inc.*, 611 F.2d 1277, 1283 (9th Cir. 1980).

After 1955, Congress again underscored the importance of mineral development when it passed the Mining and Minerals Policy Act of 1970 ("MMPA"). 30 U.S.C. § 21a. The MMPA provides that "it is the continuing policy of the Federal Government . . . to foster and encourage private enterprise in . . . the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries. . . ." In 1976, Congress incorporated the MMPA into the Federal Land Policy and Management Act ("FLPMA"), which requires the federal government to manage federal public lands "in a manner which recognizes the Nation's need for domestic sources of *minerals*, food, timber, and fiber from the public lands including implementation of the [MMPA] as it pertains to the public lands . . . ."[3] 43 U.S.C. § 1701(a)(12) (emphasis added).

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[3] The Public Land Law Review Commission ("PLLRC"), which in 1970 provided recommendations to Congress on public land management, also recognized the continuing policy of the federal government to encourage and facilitate mineral development. PLLRC, *One Third of the Nation's Land* (1970), 125 ("The public interest requires that individuals be encouraged—not merely permitted—to look for minerals on the public lands.").

Therefore, while federal policy recognizes the importance of environmental protection, the laws do not allow for unreasonable or material interference with mineral development under the auspices of environmental protection. Any law that prevents the development of mineral resources, like California's ban on suction dredge mining, stands as an obstacle to the longstanding and continuing policy of the federal government to encourage and facilitate development of mineral resources on federal lands and is contrary to the expressed rights granted by the Mining Law. Accordingly, California's ban is in clear conflict with the objectives of the federal mining laws.

II. CALIFORNIA'S BAN ON SUCTION DREDGE MINING CONFLICTS WITH THE EXPRESSED LANGUAGE OF THE MINING LAW AND STANDS AS AN OBSTACLE TO THE DEVELOPMENT OF THE NATION'S VALUABLE MINERAL DEPOSITS.

California's moratorium is preempted by federal law because it conflicts with the expressed language of the Mining Law and stands as an obstacle for those seeking to develop mineral resources on federal land open to mineral entry under the Mining Law. Although the Supreme Court has recognized that each state retains jurisdiction over federal lands in its territory, it has also made clear that Congress "retains the power to enact legislation respecting" federal lands pursuant to the Property Clause, U.S. Const. art. IV, § 3, cl. 2. *Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976) (citing *Mason Co. v. Tax Comm'n of Washington*, 302 U.S. 186, 197

(1937); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 403-405 (1917); *Ohio v. Thomas*, 173 U.S. 276, 283 (1899)). When Congress enacts laws pursuant to the Property Clause, "the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause." *Id.* (citing U.S. Const. art. VI, cl. 2). State law conflicts with federal law when either: (1) it is impossible to comply with both state and federal law, *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142–143 (1963); or (2) where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941); *see also Silkwood v. Kerr-McGee Corp.,* 464 U.S. 238, 248 (1984).

As demonstrated above, 150 years of federal laws sets out a clear congressional objective of encouraging the development of the Nation's mineral resources. Under the guise of environmental regulation, California has now frustrated that objective by preventing the exploration for and development of Rinehart's, and other similarly situated miners', valuable mineral deposits. *See In re Suction Dredge Mining Cases,* No. DS4720, slip op. (San Bernardino Super. Ct. Jan. 12, 2015). California has essentially assumed more authority over mining on federal lands than even the federal government. Simply put, California's ban on suction dredging "materially interfere[s] with," 30 U.S.C. § 612(a), and is an unreasonable restriction on Rinehart's right to mine. *See* 39 Fed. Reg. 31,317.

As the Supreme Court has recognized, a state cannot use environmental regulations as a way to achieve land use planning on federal lands. *Granite Rock*, 480 U.S. at 587. Although the ban on suction dredge mining purportedly authorizes other methods of extracting minerals, California Fish & Game Code, § 5653.1, subd. (e), these methods are a "commercially impracticable" means for extracting gold. *Granite Rock*, 480 U.S. at 587. If a state law prevents "the only practical way" of actually mining a mineral, "the ordinance's effect is a de facto ban on mining in the area." *S. Dakota Min. Ass'n, Inc. v. Lawrence Cnty.*, 155 F.3d 1005, 1011 (8th Cir. 1998).

Regardless of California's ability to regulate mining in its state, it clearly cannot prevent citizens from exercising their rights under the Mining Law to explore for and develop mineral deposits on federal land. *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, 1084 (9th Cir. 1979) ("The federal Government has authorized a specific use of federal lands, and Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress."); *Brubaker v. Board of County Commissioners*, 652 P.2d 1050 (Colo. 1982); *Elliott v. Oregon Int'l Mining Co.*, 654 P.2d 663 (Or. Ct. App. 1982). An ordinance that is "prohibitory, not regulatory, in its fundamental character" is unlawful and "offends both the Property Clause and the Supremacy Clause of the federal Constitution." *S. Dakota Min. Ass'n*, 155 F.3d at 1011.

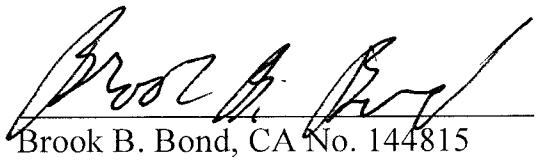
Accordingly, California's ban on suction dredge mining is preempted by federal law.

CONCLUSION

This Court should hold unconstitutional California's ban on suction dredge mining because it conflicts with expressed rights granted by the Mining Law and stands as an obstacle to the accomplishment of the full purposes and objectives of federal mining laws. At a minimum, this Court should affirm the judgment of the Court of Appeal and remand the case for further factual development.

DATED this 10th day of July 2015.

Respectfully submitted,



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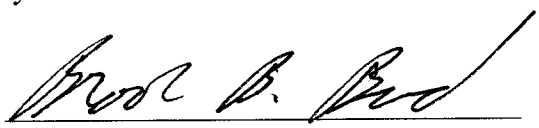
CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN EXPLORATION & MINING ASSOCIATION FILED IN SUPPORT OF BRANDON RINEHART (DEFENDANT/APPELLANT) is proportionately spaced, has a typeface of 13 points or more, and contains 4,111 words.

DATED this 10th day of July 2015.



Brook B. Bond

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DECLARATION OF SERVICE BY OVERNIGHT DELIVERY

I, Pamela Woodies, declare that I am over the age of 18 years and am not a party to the above-entitled action. My business address is 800 W. Main Street, Suite 1300, Boise, ID 83702. On July 10, 2015, the original and thirteen copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN EXPLORATION & MINING ASSOCIATION FILED IN SUPPORT OF BRANDON RINEHART (DEFENDANT/APPELLANT) were placed in envelopes provided by an overnight delivery carrier and addressed to:

Chief Justice Tani Gorre Cantil-Sakauye
c/o Frank A. McGuire, Clerk
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In addition, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN EXPLORATION & MINING ASSOCIATION FILED IN SUPPORT OF BRANDON RINEHART (DEFENDANT/APPELLANT) were placed in envelopes provided by an overnight delivery carrier and addressed to:

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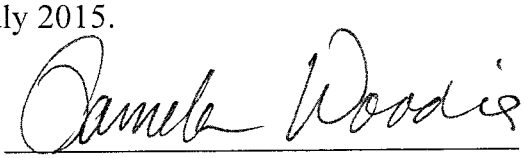
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 10th day of July 2015.



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