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MEMORANDUM

To: Dave McCracken, The New 49'ers Legal Fund
From: James L. Buchal
Date: May 15, 2016
Re: *Rinehart v. People of California*, No. 16-970 (U.S. Supreme Court)

I am happy to report that the Supreme Court invited the Solicitor General to file a brief as to whether the Supreme Court should accept Brandon Rinehart's petition for review of the California Supreme Court decision allowing states to shut down mining on federal lands. If the Solicitor General files a brief supporting acceptance of the petition, the chances that the Supreme Court will take the case go up very significantly.

As you may recall, the Obama Administration Justice Department had previously filed a brief telling the California Supreme Court that states could prohibit mining on federal property for essentially any reason or no reason without any infringement of federal interests. This was contrary to a century of law on the question and grossly misinterpreted the case of *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572 (1987). As the Solicitor General had explained to the Court in the *Granite Rock* case, federal land management statutes provide for a limited and precise role for state involvement. The *Granite Rock* court allowed states to impose reasonable permitting conditions that would not unreasonably obstruct mineral development, but did not authorize California's blanket refusal to issue permits.

The Acting Solicitor General is presumably not aware of this history and may be entirely unaware of how abolishing federal preemption in the context of federal mining claims will threaten national objectives with respect to mineral development (and even national security). The Justice Department should look primarily to the Department of Interior and its agency the U.S. Bureau of Land Management for guidance in this situation, though the Department of Agriculture is also involved through the U.S. Forest Service.

As you may recall, we were informed that elements within the Obama Administration previously overrode the minerals staff at the agencies to take the position Justice did. With the new

Administration, the time is ripe for President Trump's new appointees, particularly at Interior, to restore a correct interpretation of law, urge the Solicitor General to repudiate the Obama Administration positions, and to support Rinehart's petition for review.

Sincerely,

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

James L. Buchal