May 2017

This Month:
Rinehart Case Update
Prospecting the Channels
Murphy’s Bar
Updates

Cover photo: Remember dredging?
We were notified by Pacific Legal Foundation the U.S. Supreme Court has requested the opinion of the U.S. Solicitor General in the Rinehart Case.

So what does this development mean? The U.S. Supreme Court accepts cases based on Rule 10 of the U.S. Supreme Court:

**Rule 10**

“Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.”

**The Statistics**

Practically speaking the U.S. Supreme Court accepts very few cases. In the 2005-2006 term 8,517 cases were submitted, the Court agreed to hear only 78, or slightly less than 1%.[1]

When we look at statistics the first step in deciding whether they’ll review a case is known as the “Call for Response.” This indicates at least one of the justices has found the case interesting enough to request a response from the defendant. In the Rinehart case the defendant is the state of California. The U.S. Supreme Court has already issued for call for response from California and California has received their response.

Pacific Legal Foundation has already responded to the response.

Back to statistics – of the 8,517 cases petitioned in 2005-2006 only 200 calls for response were issued.[2]

From research the grant rate for a petition in which the Court has called for a response increase from 1% of petitions to 8.6%. Interestingly, when the State is the respondent and files a response the grant rate then increases 16 fold.[3]

The next step in the process is the Call for Views of the Solicitor General of the United States. Under this step the Court officially asks the Solicitor General what his opinions on the case are. The response from the Solicitor General is issued as a briefing.

In the California Supreme Court the U.S. Solicitor General (under the Obama administration) issued a briefing which said California could ban dredging and not run afoul of federal preemption.

The U.S. Supreme Court has now asked the U.S. Solicitor General whether they would like to re-evaluate this position.

To issue a call for views of the Solicitor General all the justices must vote on it and at least 4 must agree. For the 2005-2006 term the U.S. Supreme Court issued only 12 calls for views of the Solicitor General.[4]

When the Supreme Court issues a call for views of the Solicitor General the grant rate of the petition increases to 42%.[4]

Interestingly when the U.S. Solicitor General responds the court follows their advice 80% of the time.[5]

In other words the Rinehart case is now the decision of the United States Solicitor General. If the Solicitor General issues a brief which says the Court should grant Rinehart’s petition then its probable Rinehart will be headed to the U.S. Supreme Court.

As mentioned it’s less than ½ of 1% of all cases the Court will even request the opinion of the United States. Rinehart has passed that hurdle.

In fact, the Rinehart case is now one of a very very small group of cases which could be heard by the Court.
Pacific Legal Foundation has already submitted a letter to the Solicitor General, and we will be drafting letters for Congressional signature. PLF has requested we don’t flood the Solicitor General’s office with letters. We’ve got that part covered with very focused and tailored letters.

WRITE A LETTER!

What you can do is write a letter to the Trump administration requesting they support Rinehart’s petition and make them aware of the issue. You can write to:

President Donald J. Trump
1600 Pennsylvania Ave NW
Washington DC  20500

Director Ryan Zinke
Department of the Interior
1849 C Street NW
Washington DC  20240

Don’t under estimate the power of the written letter. We’ve battled long odds to get here your letter counts at this pivotal time.

Please don’t write the Solicitor General, we need to follow the advice of PLF.

Use your own wording, we’re not promoting a form letter here, just some general text and some points to cover. Keep your letter short (one page, two at most) and be very respectful.

Suggested Points to Cover:

Dear President Trump;

The U.S. Supreme Court has recently requested the views of your Solicitor General in an important case to American mining.

The case is Rinehart v. the state of California, 16-970.

Brandon Rinehart, the petitioner, is a young father and electrician. He was cited and convicted of mining on his federal mining claim despite having done the exact same type of mining under a permit for years. The State cited him for mining without a permit, even though the State refused to establish a permitting system.

The miner was operating on a legal federal mining claim and the issue before the California Supreme Court was whether federal laws promoting mining could be superseded by state environmental laws which prohibit mining.

The California court ruled a federal mining claim only grants the miner a possessory interest, but no right to mine the claim was ever intended by Congress.

If left standing this ruling has the potential to effectively end motorized methods of mining in California. Recently the state of Oregon also imposed a ban on motorized mining similar to the California ban, this case is pending before the 9th Circuit Court of Appeals.

The United States now has the opportunity to reverse this decision and re-establish federal supremacy over federal lands and the use of those lands. The use of those lands is solely reserved to Congress and for over 150 years miners have operated under the 1872 Mining Law which encourages and promotes the extraction of minerals.

I hope your administration will support the petition of Brandon Rinehart and support the ability of thousands of small-scale miners to resume legal mining on their claims.

Respectfully,

We're about 6 weeks from trial.

On July 12th, in San Bernardino, Judge Ochoa will hear arguments in the CEQA case and the Walker Case.

The Walker Case

Keith Walker, a dredger from Sonora, has challenged the constitutionality of AB 120 and SB1018, the two laws which extended the dredging ban and imposed additional requirements which were impossible to meet. Walker claims these laws were passed under the annual budget bill and they violate the clause in the California constitution which requires a bill contain a single subject. The annual funding bill is meant only for funding and is not supposed to be used to pass new laws, or modify existing laws - at least according to the constitution.

If Walker is correct then the extension of the dredging moratorium, and the requirement that all significant effects be fully mitigated would be thrown out. The state over the past few years has passed and modified many laws through the budget process, and Walker is the only person who has challenged them. The State has requested a delay in Walker’s case, but Walker has refused to delay further.

The CEQA Case

The second case is the WMA / PLP challenge to the environmental impact report. This lawsuit challenges the legality of conducting the EIR when a valid EIR already existed. The State claims they had additional information which wasn't available in 1994 and this warranted a new EIR. We have challenged this as false and have presented evidence there were no new studies which added any new information to the the conduct of suction dredging.

Our case is based on two primary challenges. First, we contend the State didn't have the legal right to conduct the EIR in the first place. The 1994 EIR was valid and the regulations were valid. The California Environmental Quality Act (CEQA) states once a EIR is completed it is final and should not be re-done except under unusual circumstances. We claim those circumstances didn't exist and the State fabricated the justification to conduct a new EIR and issue new regulations which we contend is an illegal act.

Our second challenge is to the baseline used in the EIR. In an EIR you must pick a point in time from which to measure changes to the environment. For instance, if you are building a highway across a section of untouched desert then you would pick the current date as the point in time to measure change. If twenty cactus existed prior to the highway, then the paving over of those cactus would be a change in the environment.

If, however, like dredging, the highway already existed, and all you wanted to do is pave it over you would measure change from the existing highway. In dredging review the State assumed no dredging, and in fact no mining, had ever taken place in California. An environmental condition which is clearly false and the use of this theoretical baseline wildly exaggerated the environmental effects.

If Walker wins then the two laws which extended the dredging ban are no longer valid. If we win CEQA then the EIR which the 2012 regulations are based on are no longer valid.

So what would happen then? If we throw out the EIR, then the last valid EIR (1994) and the last valid regulations are in effect. This leaves only the ongoing Water Board study to contend with.
By now you’ve noticed we’ve done quite a few articles on the ancient channels. If you’ve been reading them then you know the reason is the ancient tertiary channels were the source of the majority of gold in California.

In fact, other than the lode sources, the tertiary channels produced virtually all of the gold in California. Locating and prospecting these old channels can result in mines with commercial value.

Within a few short years of the California Gold Rush the easy gold, that lying around on the banks, was exhausted and the miners discovered the source of the gold was eroding from the ancient dead rivers. They began tunneling into these channels and discovered the old rivers were enormously rich with gold.

This tunneling led to hydraulicking, which was a relatively short-lived technique, about 30 years in total. Once the miners could no longer profitably hydraulic the channels they began drifting in on them again to reach the bedrock under the old rivers.

We continue to hope, that someday, mining can resume in California and these treasure vaults can be reopened by the miners.

We’ve provided information before about unworked sections of channel and in this article we re-print an article from the California Bureau of Mines on a section of channel in the Yuba district in the Port Wine Ridge area. For the person with big dreams, there’s still a lot of ground left and here we identify another section of channel for you to consider.

“The Brandy City Mine, which is now being worked, still contains about half a mile of unworked ground along the channel. At Scales, below the junction of the Port Wine – La Porte branches there is a very heavy wash, which is largely inter-volcanic. This underlies the original white gravel which is mixed with fine andesitic pebbles

There is a tremendous area of unworked gravel here. Mining is still being done in a small way, both hydraulicking and drifting. From Scales on up the Port Wine Ridge, the channel is almost intact and is largely virgin. At Mount Pleasant, above Scales, is the junction of the La Porte and Port Wine channels. There are from sixty to eighty million yards of gravel here which would make on of the easiest hydraulic deposits in the state. About two hundred feet in depth the bank is composed of small white quartz gravel with an unknown width, which is presumably, at least, half a mile. The channel extends for nearly two miles. The center of it has been worked for about half a mile, but the balance is practically virgin. It is eminently suited to hydraulicking, as the values run clear up to the top soil and the bedrock pay, judging from the history of the early mining, is undoubtedly good.

The Poverty Hill branch of this channel extends on up through Secret Diggings to La Porte. Both of these places are pretty well worked out, and were among the richest gravel deposits ever known in the State of California. Above La Porte the main channel is practically intact, although some prospecting has been done on it at the Bellevue Mine. As the channel at this point was continuously crossing a belt containing quartz seams and stringers which were rich in gold, the values appear to run almost uniformly through the channel. The Bellevue Mine itself probably contains from four to five miles of virgin channel, which should be among the best drift ground yet remaining in the state.

Passing under the Gibsonville Ridge, where a great deal of hydraulic ground was developed in the early days, it continues on up to Hepsidam and Whiskey Diggins. It is almost altogether composed of white quartz gravel wherever it is exposed, and the bottom strata have almost invariably made excellent drifting ground wherever it has been tapped.

From Hepsidam the channel continues northwest and east of Pilot Peak. It turns shaply to the east, passes through around to the north of Bluenose Mine and swings over on the west side of Nelson Creek.
The tributaries of Nelson Creek have all been enriched by this channel.

Another branch of this channel comes down from the upper end of Little Grass Valley and enters it somewhere in the Bellevue ground, not far from the Thistle shaft. The upper end of this channel is now being worked at the McFarland Mine and is paying very well.

The gold appears to be distributed through the bottom ten or fifteen feet of the gravel with a great deal of uniformity.

Still higher up, around the eastern slope of Pilot Peak, we have the Onion Valley channel. This is one of the richest feeders of the Gibsonville – La Porte channel that is first noted above Washington Creek near Golden Gate. From here it crosses through the old Sawpit diggings, where a portion of the channel was faulted down for about a mile and was hydraulicked at Richmond Hill. Richmond Hill was one of the richest hydraulic mines in the state at the time of its operation. The whole flat above Sawpit has been drifted out, although the channel was pretty well spread over a large section of country by the faulting.

Above article re-printed from:
Haley, Charles Scott, California Placer Deposits, California Bureau of Mines, 1924

PROSPECTING THE CHANNELS

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A good way to support what we do is to buy something. All our money goes right to the lawyers, and we just spent about $1,000 to get to DC and back, but we are unpaid, and have always been unpaid. If you want to provide a tax-free donation, then you can donate to our non-profit, the Pacific Crest Alliance. If you want to buy something you can go to www.sierrarivers.com and buy a membership, or other stuff we have on the site.

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YOU HAVE TO BELIEVE

“It’s not whether you get knocked down; its whether you get back up.” Vince Lombardi

I think what we’ve learned over the past 7 years of fighting the dredging ban is sometimes you can really overcome the longest of odds, and even the little guy, if he doesn’t quit, can win.

We’ve also learned this takes time, and more importantly it takes building relationships. Relationships don’t happen overnight, and to be honest they often happen just because you keep coming back – humbly.

Our proposed legislation is now in its fourth review by the Congressional legal office. The last draft we had was pretty close, but missing some wording to ensure it was lock tight. Our last draft actually got through the legal office, but in reviewing we were afraid there was still wiggle room we wanted to squeeze out.

Again, it takes time. In the case of this legislation it took 5 years of effort, but we’re very close to having a bill introduced.

The goal is to look at the long term. We need to always look past the current litigation and foresee what our opponents are going to do, and then head off those actions. That’s what we’re doing.

To think how close we are to winning it all really makes you sit back and pause. We miners are so close to having the Rinehart case picked up the U.S. Supreme Court and we miners are so close to getting legislation introduced which will protect us for a generation.

We’re that close.

It couldn’t have been done without your contributions. It was your contributions which paid the Rinehart bills, and it was your contributions which allowed us to push forward. Thank you all.

After I write the last check from our bank account next week (we’ll have $100 left) we’ll only owe the lawyer $1,000. Going into July we need $6,000 more. We have to pay 2 days of lawyer time, and we’ll have to pay to file the appeal.

Two years ago we owed $40,000. We’re down to only $1,000.

If you join the WMA at the $100 level we’ll send you a copy of the 2017 Claims Report, and actually help you find your own mining claim. Joining now also entitles you to next year’s claims report (Advanced Report) and you’ll be the first to know of claims which potentially could be closed by BLM months ahead of the public.

This fight is a worthy cause, and we’re on the brink of winning it all.

If you haven’t jumped in and provided financial support to someone – now would be a good time.

Thanks to those who have provided Keith Walker some money. It great to see so many miners who have provided their hard earned money to not just the groups, but also the individuals who really needed it.

The money will ensure Keith can attend the July trial and not have to worry whether he’ll be able to pay August rent – thank you all.

The news in the Rinehart case is beyond our wildest dreams.

It was 5 years ago I walked into the Sacramento office of Pacific Legal Foundation and offered to take a couple lawyers to dinner to discuss the dredging issue, an issue they had never heard of.

Those two lawyers were Damien Schiff (now nominated for a federal court judge) and Jonathon Woods (lead lawyer in the Rinehart case). At the time I only hoped we could somehow persuade them to even look at our dredging cases and they committed to helping us in our appeal, and here we are 5 years later on the brink of going to the U.S. Supreme Court with Pacific Legal.

For four years we have doggedly and persistently returned to Capitol Hill with our few sheets of paper on a proposed bill to fix some significant issues.

Three weeks after meeting with Congressman Bishop and discussing the problems with the Endangered Species Act there were hearings on Capitol Hill on this Act held by Congressman Bishop and testifying was... Yeah, Jonathon Wood.
I have found even insane people can act rationally on occasion so I figured Ruck a Chucky Chuck’s membership in the Sierra Club would be short-lived.

And it was. After the frog incident we reached a sort of détente where I wouldn’t send any more newbie prospectors his way, if he wouldn’t hold tours on my claim in Starvation Creek.

It appears the Sierra Club and Ruck a Chucky Chuck had a falling out when he threatened one of them with a pocket knife, but when he reached in his pocket to grab the knife he ended up with an endangered frog in his hand, which the assembled environmentalists were somewhat aghast and Chuck had to beat a hasty retreat back to Hard Luck Canyon.

So a few days later he comes slinking into Murphy’s Bar asking for a truce. I’m sorry to say a lot of frogs gave their last full measure to bring Chuck to the negotiating table, or bar as you may have it.

According to Chuck they weren’t really all that hard to find. He could pick up a bucket full in Hard Luck Canyon in a good afternoon, then simply transport them a couple thousand feet in elevation and release them on Starvation Creek where they would promptly freeze to death. After a few trips like this, and the ground littered with dead frogs he essentially had nothing more than a large frog die off which showed the environmentalists a endangered frog couldn’t actually survive on Starvation Creek, although I heard some of them were writing some type of research paper on the unexplained frog die off.

With a complete lack of frogs to save on Starvation Creek the environmentalists have returned to Grass Valley plotting their next move to save the environment.

I think Rocky, the bartender, was hoping for more fireworks out of the Ruck a Chucky Chuck episode, but I knew at some point Chuck would run out of frogs, but I had an endless supply of Newbies.

Now for those of who’ve been mining for a while Newbies can be an endless source of entertainment. I’m not sure why Ruck a Chucky Chuck doesn’t appreciate having a few around.

Well, other than they have no idea how to find gold and you find yourself spending hours trying to show them how to pan, where to dig, where not to dig and so on.

Flanagan, the downstream claim owner, isn’t necessarily all that mean spirited but one summer he was dredging the Yuba and had been bothered all day by Newbies. Finally he agreed to show them where some gold was in the bank. It just happened to be in the middle of a Poison Oak patch.

The irony is they still got a couple penny weight out of it.

Flanagan and I both have claims on the Yuba, but being undocumented dredgers we don’t really want to throw the dredge in the water next to Highway 49 as a couple thousand tourists drive by taking pictures, and of course the environmentalists who take the pictures and send them into CalTip.

So for the past few summers we’ve been holed up in Starvation Canyon – operating undocumented, and supporting the local bar with our occasional trips.

The summer mining season pretty much started last week. Flanagan was in the canyon before I was, but he’s younger and less experienced. This time of year the water is still running off from the snow, and its high.

He’s got one of those fancy wet suit heater tubes that pumps hot water in his wetsuit. I’ve got a wetsuit with some pretty respectable holes in the knees and elbow where any warm water tends to run right out.

So last week I’m sitting in Murphy’s Bar, in the town of Hardrock, talking with Rocky Stone the bartender when Flanagan comes in and puts a two ounce gold bottle on the counter.

Full.

Rocky, who is a bartender in Gold Country, but who has never actually seen gold, gets wide eyes and asks “Where’d you get that from.”
Which is a stupid question.

I imagine he thinks the rest of the conversation will go something like, “Why just 350 yards down the road, take a left walk 50 feet and dig in the hole I was just digging in and it’s just loaded with gold.”

Newbies.

Well, the conversation didn’t go like that, it went more like this.

“I was doing a little panning.”

Sure, I think, the last time someone got two ounces of gold panning a creek in California was 1850, but Rocky doesn’t know this.

“Where?” Rocky asks.

“Hornet Gulch.” Flanagan replies.

There is no Hornet Gulch, at least none that I know of.

Now Bob Flanagan and I are both undocumented dredgers. A respectable dredger isn’t going to be caught panning when he’s got a nice 5” dredge in the water, so I know Bob’s not been panning, he’s been cleaning up from the winter floods, but Rocky doesn’t know this.

Rocky suspects we’re undocumented dredgers, but from what I hear his past might be a little checkered as well, so he doesn’t push too far on asking what we’ve been up to, and we don’t ask many questions about his New York accent.

Flanagan’s lips are still blue so I know he’s been working Starvation Creek, but I’m not going to clue Rocky in on this.

“Water cold?” I ask.

“Ice cold, but with the wetsuit heater it’s pretty nice.” Flanagan replies.

“You need a wetsuit heater for panning?” Rocky asks.

“Well,” Flanagan replies, “I’m what you’d call a professional panner. Not one of those sit on the bank and pick at rocks, I get right in the gut of the river and pan.”

“So you’re panning underwater?” Rocky asks.

“Yeah, I grab my pan, swim to the bottom, scoop up a bunch of bedrock material and swim to the bank and pan it out.”

“And you got all that gold just panning?” Rocky asks with just a hint of gold fever starting to show through.

“Yup.” Flanagan lied. But it sounded convincing when he said it.

“Is there any more there?” Rocky asks.

Another stupid question. Any miner worth his salt, who’s on the gold isn’t go to tell someone there’s lots more gold where that came from, but I pretty much know what Flanagan’s going to say before he says it.

“Lots more. After the big winter rains the gulch is just loaded with gold. Unfortunately I won’t be able to get back up there until July. I’ve got to check on some claims down by Alleghany and do some work.”

“Is Hornet Gulch hard to get to?” Rocky tries to ask casually as he’s sliding a couple of beers across the bar. “Those are on me.” He says. “I had a good week and you guys are good customers.”

I look at Bob, who shoots me a “Don’t say a word” glance because Rocky has never offered up a free beer, but Bob is working an angle and I let him run with it.

“You see, that’s the thing Rocky, it’s easy to get to but the exact spot is hard to find I had to mark a trail with orange engineer tape last fall so I could remember how to get to my spot. I always park my truck there by Pinnacle Peak at the creek crossing, then follow the orange markings. But don’t tell anyone about it, there’s no claim on it right now.”

Bob picked up his gold bottle and held it up to the light. He bounced it up and down a couple of times to where you could hear the pickers clinking against the glass.

“Too bad I won’t be able to get back in there for a while.” Bob says as we get up to head for the door.

As the door shuts behind us I ask “Why did you send him to Deadman Ravine with a full blown snow melt going on? This time of year the Yellow Jackets are thick in there and you know the deer hunters have orange tape everywhere, he’ll just wander in circles for days.”

“Yeah, he will.” Bob replies. “But, next time he’ll need more precise information won’t he? And that information will be worth some beer.”

“Newbies.” I sigh.
Downieville River Inn

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