

CERTIFIED FOR PUBLICATION

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE ex rel. DEPARTMENT OF
CONSERVATION et al.,

Plaintiffs and Appellants,

v.

EL DORADO COUNTY et al.,

Defendants and Respondents

LORING BRUNIUS,

Real Party in Interest and
Respondent,

CALIFORNIA MINING ASSOCIATION et al.,

Intervenors and Respondents.

C039428

Superior Ct. Nos.

PV002958

PV002959

**ORDER
MODIFYING OPINION
AND DENYING REHEARING;
No Change in Judgment**

APPEAL from a judgment of the Superior Court of El Dorado County, Winslow Christian, Judge, Retired Associate Justice of the Court of Appeal, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. Affirmed in part and reversed in part.

Bill Lockyer, Attorney General, Richard M. Frank, Chief Assistant Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, Richard M. Thalhammer, Deputy Attorney General, for Plaintiffs and Appellants.

Louis B. Green, County Counsel, Edward L. Knapp, Chief Assistant County Counsel; The Diepenbrock Law Firm, Mark D. Harrison and Gene K. Cheever for Defendants and Respondents; Becker & Runkle and David C. Becker for Real Party in Interest and Respondent; Bingham McCutchen, David E. Moser and Peter M. Morrisette, for Interveners and Respondents.

THE COURT:

It is hereby ordered that the opinion filed herein on May 9, 2003, be modified as follows:

1. The last sentence on page 6 of the majority opinion, is modified to read as follows:

This court denied Interveners' and the County's petitions for a writ of mandate or other relief.

2. On the first line of footnote 3 on page 19 insert the words "and the County" between the words "Interveners" and "provided" so that line reads:

In support of their demurrer, Interveners and the County provided evidence

On line 5 of footnote 3 insert the words "the County" following the word "Interveners" so that line reads:

Interveners and the County argue this legislative history indicated the

3. On page 37 delete the last sentence preceding the first full paragraph which commences with "We find" and ends with "1021.5" and replace it with the following sentence:

We find this lawsuit did not effectuate a strong public policy; accordingly, the trial court abused its discretion in awarding fees under section 1021.5.

4. On page 39 insert the following language preceding the last sentence of the second full paragraph:

In exercising discretion to award fees under section 1021.5, the trial court is bound by the legal principles governing such an award. (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.) Section 1021.5 requires the enforcement of an important right affecting the public interest as a prerequisite to an award. Because that prerequisite is absent here, the trial court abused its discretion in awarding fees.

These modifications do not change the judgment.

The petitions for rehearing are denied.

FOR THE COURT:

SCOTLAND, P.J.

MORRISON, J.

I would grant the petitions for rehearing.

SIMS, J.