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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.

Case No. S222620

**SUPREME COURT
FILED**

JUL 21 2015

Frank A. McGuire Clerk

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

Deputy

**PEOPLE'S RESPONSE TO DEFENDANT AND APPELLANT
RINEHART'S (1) CONDITIONAL SUPPLEMENTAL REQUEST
FOR JUDICIAL NOTICE, AND (2) OPPOSITION TO REQUEST
FOR JUDICIAL NOTICE, MOTION TO STRIKE, AND
ALTERNATIVE MOTION FOR LEAVE TO PRESENT
ADDITIONAL MATERIAL BY CONDITIONAL
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE**

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On July 2, 2015, appellant Brandon Lance Rinehart filed (1) an Opposition to Request for Judicial Notice, Motion to Strike, and Alternative Motion for Leave to Present Additional Material By Conditional Supplemental Request for Judicial Notice, and (2) a Conditional Supplemental Request for Judicial Notice. The People of the State of California hereby respectfully respond to both filings.

1. Response to Rinehart's Motion to Strike

Rinehart opposes and moves to strike the entirety of the People's June 17, 2015 Supplemental Request for Judicial Notice ("SRJN"), including exhibits R through W. Rinehart first objects to Exhibits R through U of the SRJN, which consist of several sections of the Department of Fish and Wildlife's Draft Subsequent Environmental Impact Report concerning suction dredge mining, and Exhibit V of the SRJN, which is the Department's final findings on that document. But Rinehart himself had previously submitted and requested judicial notice of parts of the same document's executive summary. (See Defendants and Appellant's Motion for Judicial Notice, dated Apr. 21, 2015, Exh. D). Exhibits R through V of the People's SRJN, which are excerpts from the body of the same document as the summary Rinehart submitted, simply offer a complete picture of the analysis referred to in Rinehart's excerpts. Although the People have explained that the significance of the suction dredge mining's environmental effects is not at issue in this case, Rinehart argued otherwise, contending that the moratorium concerns only trivial environmental effects. (See People's Reply, pp. 20-25 & n.13.) To the extent the Court does consider Rinehart's argument and his submitted excerpts from the draft environmental report's executive summary, it should also consider the

People's additional excerpts from the same document which explain that summary.¹ Accordingly, the Court should deny Rinehart's motion to strike.

2. Response to Rinehart's Conditional Supplemental Request

Now, in his newly filed Conditional Supplemental Request for Judicial Notice, Rinehart proffers eleven declarations and reports — many of which postdate the other briefing in this case — that were filed in the *Suction Dredge Mining Cases*.² The People have no objection to the Court taking judicial notice of the fact that these documents were filed in a separate civil case. However, the Court should not take judicial notice of the factual assertions contained in these documents. (E.g., *In re Vicks* (2013) 56 Cal.4th 274, 314.) The People submit that Rinehart's newly submitted documents simply reinforce that the *Suction Dredge Mining Cases* — not this case — provide the proper forum for review of the Department's administrative evaluation of the environmental effects of suction dredge mining. (See People's Reply, p. 24 & n.13.)

¹ Another exhibit in the People's SRJN, Exhibit W, was the declaration of Burrett W. Clay, which explains that mining methods other than suction-dredge mining may be feasible for certain claims. The People submitted that declaration here not to prove that point, but rather for the purpose of showing that miners' infeasibility claims are contested. (People's Reply, p. 27.)

² Rinehart's counsel had submitted the declarations to the *Suction Dredge Mining Cases* court in support of a motion for injunctive relief. The trial court denied that motion.

Dated: July 21, 2015

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Rhinehart**
No.: **S222620**

I declare:

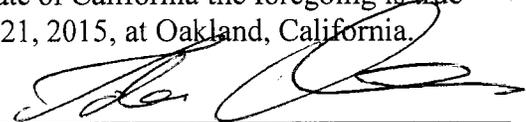
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 21, 2015, I served the attached **People's Response to Defendant and Appellant Rinehart's (1) Conditional Supplemental Request for Judicial Notice, and (2) Opposition to Request for Judicial Notice, Motion to Strike, and Alternative Motion for Leave to Present Additional Material by Conditional Supplemental Request for Judicial Notice** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

Please see attached list.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 21, 2015, at Oakland, California.

Ida Martinac
Declarant


Signature

People v. Rinehart
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