

Suction dredging cases move to appeals

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Two suction dredge mining suits in the California court system have been dealt serious blows in recent months, but attorneys in both cases will soon be arguing appeals on issues of constitutionality and harm caused by miners' inability to use suction dredges in the state.

The first case, which consists of a number of consolidated cases from across the state – including one that originated in Siskiyou County – was recently handed a judgement from Judge Gilbert Ochoa that will keep miners from using suction dredges in the state for the foreseeable future.

According to Los Angeles attorney David Young, Ochoa denied the preliminary injunction on a number of counts, opening up the possibility of an appeal, which he said will be made on the basis of an argument that "irreparable harm" will result without the injunction.

With the act of suction dredging a misdemeanor without a permit, and permits currently not being released by the California Department of Fish and Wildlife, Young said that his tact will be arguing that the threat of criminal prosecution – and carrying through on that threat – constitute irreparable harm to miners in California.

The theories Young advances in his appeal are intertwined with a second case, which is an appeal of the criminal conviction of Brandon Rinehart. According to Rinehart's attorney James Buchal, the appeal was planned to be filed in the Third Appellate District of California on Thursday.

Buchal's appeal, made available to the Siskiyou Daily News, calls for the reversal of Rinehart's conviction on a charge of using a suction dredge without a state permit and operating a suction dredge within 100 yards of an area closed to suction dredging by the state.

Buchal argues in his appeal – as well as in the lower court – that Rinehart's ownership of a federal mining claim and federal mining permit preempts the state's authority to prevent him from mining through the use of statutes.

"Here, the federal government has not merely expressed some general policy in favor of mineral development," the appeal states. "It granted [Rinehart] specific property rights in specific, federally-owned ground, and the State's interference with this scheme is simply not permitted under the Supremacy Clause of the U.S. Constitution.

"[Rinehart] does not dispute the State's right reasonably to regulate his mining activities, but requiring a permit and then categorically refusing to issue permits is not reasonable, and not constitutional."

The appeal goes on to argue that the lower court erred in disallowing evidence that Rinehart's only economically-feasible method of mining his claim was suction dredging.

Young, who has already submitted his appeal, said that his arguments will likely mirror those in the Rinehart case. He added that by Nov. 22 he will also be submitting requests for summary judgement in his case, asking Ochoa to issue judgement on the federal preemption issue, among others.

California is currently not issuing dredging permits as the result of a court order requiring the development of a new Environmental Impact Report and suction dredging regulations. The reinstatement of the mining practice is contingent upon full mitigation of identified significant environmental impacts and the implementation of a fee structure that fully covers the costs of administering the program – neither of which have been done by the state.

Statutory language does allow for the reinstatement of the suction dredge permit program on June 30, 2016 if that date passes before the foregoing requirements are met.