

GILBERT OCHOA, JUDGE
CLERK: KIMBERLY REYNOLDS
COURT REPORTER KELLY MAGGS 13384
COURT ATTENDANT LAURA SKOPHAMMER

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APPEARANCES:

ATTORNEY JAMES BUCHAL PRESENT FOR PLAINTIFF/PETITIONER.
ATTORNEY LYNNE SAXTON APPEARS BY COURTCALL FOR KARUK TRIBE.
PLAINTIFF KEITH ROBERT WALKER PRESENT
ATTORNEY BRADLEY SOLOMON PRESENT FOR DEFENDANT/RESPONDENT.
ATTORNEY MARC MELNICK PRESENT FOR DEFENDANT/RESPONDENT.
ATTORNEY JOHN MATTOX PRESENT FOR DEFENDANT/RESPONDENT.

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PROCEEDINGS:

PREDISPOSITION HEARING HELD

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COURT GIVES ITS TENTATIVE RULING.
ARGUED BY COUNSEL AND SUBMITTED.

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COURT FINDS:

IN LIGHT OF THIS COURTS MSA/MSJ RULINGS, THE CALIFORNIA SUPREME
COURTS GRANT OF REVIEW IN
THE RINEHART CASE, AND THE RECENT AMENDMENTS TO F & G CODE SECTION
5653 (SB 637), THE REMAINING
CEQA AND APA ISSUES SHOULD NOT BE ADJUDICATED IN THIS LITIGATION UNTIL
THE SUPREME COURT ISSUES
ITS RULING. INDEED, THE ISSUE THAT THIS COURT RULED ON - I.E., WHETHER
SECTIONS 5653 AND
5653.1, AND THE 2012 REGULATIONS ARE FEDERALLY PREEMPTED - IS THE VERY
ISSUE THAT IS NOW BEFORE
THE CALIFORNIA SUPREME COURT.

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ALTHOUGH ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED, THE CASE HAS
BEEN FULLY BRIEFED
ACCORDING TO THE MOST RECENT INFORMATION. MOST NOTABLY, THE UNITED
STATES DEPARTMENT OF
JUSTICE HAS FILED AN AMICUS BRIEF ON BEHALF OF THE UNITED STATES
DEPARTMENTS OF AGRICULTURE
AND INTERIOR, AS WELL AS THE BUREAU OF LAND MANAGEMENT AND THE
FOREST SERVICE, WHEREIN THE
UNITED STATES ESSENTIALLY ARGUES THAT FEDERAL MINING LAWS AND
REGULATIONS DO NOT
PREEMPT SECTIONS 5653 AND 5653.1, AND THE 2012 REGULATIONS.

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WHILE THE BRIEFING IN RINEHART IS NOT PART OF THE ADMINISTRATIVE
RECORD IN THIS LITIGATION, THIS

COURTS MSA/MSJ RULING RESTED LARGELY ON THE APPELLATE COURTS THEN-PUBLISHED OPINION IN THAT CASE. IT IS UNDISPUTED THAT THE SUPREME COURTS RULING - WHENEVER IT IS ISSUED - WILL HAVE A DIRECT AND TREMENDOUS IMPACT ON THE CURRENT LITIGATION. IF THE SUPREME COURT OVERTURNS THE APPELLATE COURTS RULING ON THE FEDERAL PREEMPTION ISSUE, THEN THIS COURTS MSA/MSJ RULING MUST SIMILARLY BE VACATED - THUS CHANGING THE CURRENT PROCEDURAL POSTURE OF THIS CASE. IN ADDITION, IF THE SUPREME COURT CONSIDERS THE IMPACT - IF ANY - OF THE RECENTLY-ENACTED AMENDMENT TO SECTION 5653 ON THE FEDERAL PREEMPTION QUESTION, THEN THAT EXAMINATION MAY ALSO BE PERTINENT TO THE CEQA AND APA ISSUES THAT REMAIN IN THIS LITIGATION.

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IN LIGHT OF THESE PROCEDURAL ISSUES, IT WOULD BE A WASTE OF JUDICIAL RESOURCES TO RULE ON THE CEQA AND APA ISSUES. DUE TO THE PENDENCY OF THE RINEHART DECISION, ANY FURTHER ACTION BY THIS COURT WOULD BE AKIN TO AN ADVISORY OPINION. THIS COURT DOES NOT ISSUE ADVISORY OPINIONS. IF THE RINEHART DECISION IS UPHELD BY THE SUPREME COURT, THEN - DEPENDING ON THE HOLDINGS IN THE CASE - IT MAY BE FOUND THAT THE ACCOMPANYING CEQA AND APA ISSUES ARE MOOT. HOWEVER, IF THE RINEHART DECISION IS OVERTURNED, SECTIONS 5653 AND 5653.1, AS WELL AS THE 2012 REGULATIONS, WILL ESSENTIALLY BE FOUND TO BE CONSTITUTIONALLY VALID.

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FOR THE FOREGOING REASONS, THE COURT WILL STAY THE CURRENT ACTION UNTIL THE CALIFORNIA SUPREME COURT ISSUES ITS OPINION IN RINEHART.

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NOTICE TO BE GIVEN BY ATTORNEY BRADLEY SOLOMON.

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VACATE L&M HEARING SCHEDULED FOR 01/20/16 AT 08:30 IN DEPARTMENT S33.
ACTION - COMPLETE