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## State Water Resources Control Board

January 8, 2015

The Honorable Chief Justice Tani Cantil-Sakauye and  
Honorable Associate Justices of the  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, California 94102-4783

**Re: *People v. Rinehart*, Cal. Supreme Court Case No. S222620  
Letter of Amicus Curiae State Water Resources Control Board in Support of  
Petition for Review (Cal. Rules of Court, rule 8.500(g))**

Dear Honorable Chief Justice and Associate Justices of the Supreme Court:

The State Water Resources Control Board (State Water Board) supports the People's petition for review of the Third District Court of Appeal's decision in *People v. Rinehart*, Case No. C074662. As discussed in the People's petition for review, the Third District Court of Appeal's decision threatens to disrupt established precedent in the field of preemption. Review by the Supreme Court would settle an important question of law. (Cal. Rules of Court, rule 8.500(b).) For this reason, the State Water Board urges this court to grant the petition for review and resolve the applicable standards for federal preemption of state laws affecting federal mining claims.

### ***Interest of Amicus Curiae State Water Board***

California's Legislature has charged the State Water Board with exercising the "adjudicatory and regulatory function of the state in the field of water resources." (Wat. Code, § 174.) Along with the California regional water quality control boards, the State Water Board is the principal state agency "with primary responsibility for the coordination and control of water quality." (Wat. Code, § 13001.) In addition to its legislative charge, the Supreme Court has recognized that the State Water Board has responsibility for exercising the State's affirmative and continuing duty to consider and protect public trust uses of the State's navigable waters. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 444, 446.) Collectively, these powers compel the State Water Board to protect California's water resources for all beneficial uses, whether as a source of drinking water, a source of irrigation water for California's multi-billion dollar agricultural economy, or as habitat for fish and wildlife.

These broad responsibilities assigned to the State Water Board invariably involve the regulation of federal property or activities under federal license. As a result, the State Water Board is no stranger to claims of federal preemption of California's water laws. (See, e.g., *California v. U.S.* (1978) 438 U.S. 645; *U.S. v. State of Cal., State Water Resources Control Bd.* (9th Cir. 1982)

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694 F.2d 1171; *Sayles Hydro Associates v. Maughan* (9th Cir. 1993) 985 F.2d 451.) Likewise, the State Water Board is accustomed to exercising authority conveyed by an intertwined, state-federal environmental regulatory scheme. (See, e.g., *Environmental Protection Agency v. California ex rel. State Water Resources Control Bd.* (1976) 426 U.S. 200 (superseded by Congressional action, Pub.L. 95-217, §§ 60, 61(a) (Dec. 27, 1977) 91 Stat. 1597, amending 33 U.S.C. § 1323); *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613.)

**Need for Review**

The Third District Court of Appeal's decision would require a new, variable analysis of commercial practicability for preemption that is not grounded in this court's or the U.S. Supreme Court's preemption decisions. In addition to its application to the Fish and Game Code, this new test may affect the types of preemption that apply to the State Water Board's exercise of its core responsibility to protect and allocate California's water resources for their myriad uses. Certain powers derived from federal law, such as the State Water Board's authority to issue Clean Water Act water quality certifications (33 U.S.C. § 1341; Wat. Code, § 13160) and National Pollutant Discharge Elimination System (NPDES) permits (33 U.S.C. § 1342; Wat. Code, §§ 13370-13389), would not be affected by the Court of Appeal's analysis.

However, important state-law powers to protect California citizen's and natural resources, including the necessary authority to remedy diffuse sources of pollution not subject to the Clean Water Act's NPDES "point source" permitting program (*Tahoe-Sierra Preservation Council v. State Water Resources Control Bd.* (1989) 210 Cal.App.3d 1421), derive exclusively from state law and would be subject to the case-by-case analysis contemplated by the Court of Appeal's decision. This state-law authority is especially important on federal lands such as national forests and parks, because the primary sources of water pollution on these lands are diffuse, non-point sources.

The Third District Court of Appeal's decision would create a novel variation of preemption that would magnify the challenges to legitimate environmental regulation on federal lands and bring instability to the laws the State Water Board is responsible for implementing. For these reasons, the State Water Board urges this court to grant the People's petition for review and settle the applicable legal standard for determining preemption of state environmental laws involving mining claims.

Sincerely,



Michael A.M. Lauffer (SBN178485)  
Chief Counsel

cc: Service List

**PROOF OF SERVICE**

I, Joanne Griffin, declare that I am over 18 years of age and not a party to this action. I am employed in the Office of Chief Counsel for the State Water Resources Control Board, Sacramento County at 1001 I Street, 22<sup>nd</sup> Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On this date, January 8, 2015, I served the within documents:

*People v. Rinehart*, Cal. Supreme Court Case No. S222620  
Letter of Amicus Curiae State Water Resources Control Board in Support of Petition for Review  
(Cal. Rules of Court, rule 8.500(g))

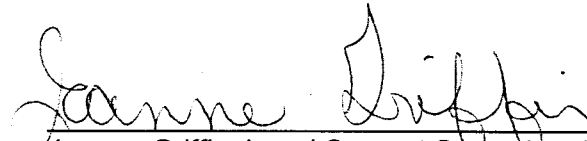
	<b>BY FACSIMILE:</b> I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
	<b>BY HAND DELIVERY:</b> I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
X	<b>BY OVERNIGHT MAIL TO ALL PARTIES LISTED:</b> I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
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By placing a true copy thereof in separate, sealed envelopes addressed to:

Clerk, Court of Appeal of the State of California Third Appellate District Stanley Mosk Library and Courts Building 914 Capitol Mall, 4 <sup>th</sup> Floor Sacramento, CA 95814	James L. Buchal Murphy & Buchal LLP 3425 S.E. Yamhill, Suite 100 Portland, OR 97214 <i>Counsel for Defendant and Appellant</i>
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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on January 8, 2015 at Sacramento, California.

  
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Joanne Griffin, Legal Support Supervisor I