

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

MARY ANN MURRAY; LIGE M.  
MURRAY,  
*Plaintiffs-Counter-Defendants-  
Appellees,*

v.

BEJ MINERALS, LLC; RTWF, LLC,  
*Defendants-Counter-Claimants-  
Appellants.*

No. 16-35506

D.C. No.  
1:14-cv-00106-  
SPW

OPINION

Appeal from the United States District Court  
for the District of Montana  
Susan P. Watters, District Judge, Presiding

Submitted En Banc June 9, 2020\*  
San Francisco, California

Filed June 17, 2020

Before: Sidney R. Thomas, Chief Judge, and Kim McLane  
Wardlaw, Marsha S. Berzon, Jay S. Bybee, Consuelo M.  
Callahan, Sandra S. Ikuta, Mary H. Murguia, Morgan  
Christen, Paul J. Watford, Michelle T. Friedland, and Ryan  
D. Nelson, Circuit Judges

Opinion by Chief Judge Thomas

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\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

**SUMMARY\*\***

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**Montana Law**

The en banc court affirmed the district court's order granting summary judgment to plaintiffs and declaring them owners of dinosaur fossils discovered on their ranch.

The Montana Supreme Court accepted a certification request from the en banc court, answered the certified question, and concluded that dinosaur fossils were not within the "ordinary and natural meaning" of "mineral" and, thus, belonged to the surface estate. The en banc court held that because the plaintiffs were the undisputed owners of the surface estate at issue, the Supreme Court's decision required a resolution in their favor.

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**COUNSEL**

Eric D. Miller (argued), Perkins Coie LLP, Seattle, Washington; Shane R. Swindle, Perkins Coie LLP, Phoenix, Arizona; Brian C. Lake, Perkins Coie LLP, Phoenix, Arizona; for Defendants-Counter-Claimants-Appellants.

Harlan B. Krogh (argued) and Eric Edward Nord, Crist Krogh & Nord PLLC, Billings, Montana, for Plaintiffs-Counter-Defendants-Appellees.

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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Gary S. Guzy and Pooja S. Kothari, Covington & Burling LLP, Washington, D.C., for Amici Curiae Paleontological Societies and Scientific Institutions.

Colleen M. Dowdall, Dowdall Law, Missoula, Montana, for Amicus Curiae United Property Owners of Montana (UPOM).

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### OPINION

THOMAS, Chief Judge:

After granting rehearing *en banc* in *Murray v. BEJ Minerals, LLC*, 908 F.3d 437 (9th Cir. 2018), *see Murray v. BEJ Minerals, LLC*, 920 F.3d 583 (9th Cir. 2019), we certified the following question, an issue of first impression under Montana law and dispositive of the instant case, to the Montana Supreme Court:

Whether, under Montana law, dinosaur fossils constitute “minerals” for the purpose of a mineral reservation.

*Murray v. BEJ Minerals*, 924 F.3d 1070, 1074 (9th Cir. 2019) (citing Mont. R. App. P. 15).

The Montana Supreme Court graciously accepted our certification request, *Murray v. BEJ Minerals*, No. 19-0304, 2019 WL 2383604 (Mont. June 4, 2019), and then answered our certified question, without modification and on the facts and procedural history provided in our certification order. *See Murray v. BEJ Minerals, LLC*, 2020 MT 131, ¶¶ 1–3 (Mont. 2020). It concluded that dinosaur fossils are not

within the “ordinary and natural meaning” of “mineral” and, thus, belong to the surface estate. *Id.* at ¶ 41. Because Mary Ann and Lige Murray (the “Murrays”) are the undisputed owners of the surface estate here, *see Murray*, 924 F.3d at 1072, the Supreme Court’s decision requires a resolution in their favor.

Accordingly, the district court’s order granting summary judgment to the Murrays and declaring them the sole owners of dinosaur fossils discovered on their ranch, *see Murray v. Billings Garfield Land Co.*, 187 F. Supp. 3d 1203, 1204 (D. Mont. 2016), is **AFFIRMED**.

## United States Court of Appeals for the Ninth Circuit

Office of the Clerk  
95 Seventh Street  
San Francisco, CA 94103

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

#### Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

#### Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

#### (1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

#### B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 10. Bill of Costs**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>*

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The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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