People v. Rinehart: No Preemption of State Environmental Regulations under the Mining Act of 1872

INTRODUCTION

In *People v. Rinehart*, the California Supreme Court unanimously upheld a gold miner's criminal conviction for using a suction dredge to mine the riverbed of a waterway on federal land in violation of a state moratorium on that mining method.[1] The court reversed the California Court of Appeal's holding that the federal Mining Act of 1872 (Mining Act) preempts state regulations that render mining on federal land "commercially impracticable."[2] Focusing primarily on the text and history of the Mining Act, the California Supreme Court determined that Congress did not intend to preempt state environmental regulations on mining.[3] Yet in its close examination of the Mining Act, the court avoided engaging substantially with *California Coastal Commission v. Granite Rock Co.*, the principal U.S. Supreme Court precedent regarding state regulation of mining on federal land.[4]

Part I of this In Brief provides factual and legal background contextualizing *Rinehart* and describes the U.S. Supreme Court's decision in *Granite Rock*. Part II then analyzes the *Rinehart* opinion, looking in particular at the California Supreme Court's interpretation of the Mining Act and its cursory treatment of *Granite Rock*. *Granite Rock* left open significant ambiguities regarding the scope of state regulatory authority over federal lands, and *Rinehart*'s intense focus on the Mining Act allowed the court to circumvent *Granite Rock*'s difficult questions while still protecting California's environmental regulations from the threat of federal preemption.

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1. People v. Rinehart, 377 P.3d 818, 820–21 (Cal. 2016).
2. *Id.* at 822; People v. Rinehart, 178 Cal. Rptr. 3d 550, 562 (Ct. App. 2014).
3. *Rinehart*, 377 P.3d at 829–30.
4. Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 587 (1987); *see Rinehart*, 377 P.3d at 823–30.

I. BACKGROUND

A. Case Background

A significant portion of California's remaining gold exists below waterways.[5] Suction dredging is a mining technique that extracts gold by vacuuming the gravel mixture of the streambed to the surface, separating the gold, and discharging the remaining gravel back into the waterway.[6] In 1961, California began requiring permits for suction dredging in order to protect fish, and the state gradually imposed tighter restrictions on suction dredging in subsequent decades.[7] In response to concerns that suction dredging not only disturbs endangered fish habitats but also contaminates aquatic and human food chains with mercury, the state legislature imposed a temporary moratorium on suction dredging in 2009, pending an environmental review by the California Department of Fish and Wildlife.[8]

In 2012, Brandon Lance Rinehart was charged with two violations of Fish and Game Code section 5653, for possessing suction dredge equipment near a protected waterway and for operating the dredge.[9] Rinehart operated the suction dredge on federal land within a claim he registered in compliance with the Mining Act.[10] Rinehart objected to the charges on the theory that the Mining Act preempted the moratorium on suction dredging because the moratorium interfered with Congress's goal of encouraging mining.[11] The trial court overruled the objection and convicted Rinehart in a bench trial.[12] The court of appeal reversed the conviction, interpreting *Granite Rock* as holding that state regulations are preempted under the Mining Act if they render mining "commercially impracticable."[13] The court of appeal remanded the issue to the trial court to determine whether the moratorium in fact made mining commercially impracticable.[14] The California Supreme Court granted the State of California's petition for review of the court of appeal's ruling, and subsequently reversed, reinstating Rinehart's conviction.[15]

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5. *See* Heather Hacking, *Flooding of Northern California Waterways Bring Fresh Prospects, Adventures in Gold Mining*, MERCURY NEWS (Mar. 6, 2017), http://www.mercurynews.com/2017/03/06/flooding-of-northern-california-waterways-bring-fresh-prospects-adventures-in-gold-mining/.

6. *Rinehart*, 377 P.3d at 820.

7. *Id.* at 820–21. These restrictions included placing certain waterways off-limits to suction dredging altogether, and forbidding even possession of a suction dredge near protected waterways. *Id.*

8. *Id.* at 821.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 821–22.

13. People v. Rinehart, 178 Cal. Rptr. 3d 550, 562 (Ct. App. 2014) (citing Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 587 (1987)).

14. *Id.* at 562–63. Even though the moratorium only forbids suction dredge technology and not mining per se, Rinehart argued that alternative techniques—such as shoveling up the streambed by hand, or panning for gold—were too slow and laborious for commercial usage. *Id.* at 554.

15. *Rinehart*, 377 P.3d at 820.

B. Legal Background

The Constitution's Property Clause[16] gives Congress absolute power over federally-owned land, and affirmative action by Congress may "preempt," or forbid, certain kinds of state action.[17] Federal laws and regulations may expressly preempt particular kinds of state action, or may generally preempt state actions that conflict with or substantially impede the achievement of Congress's aims.[18]

Congress passed the Mining Act in the late nineteenth century to create a legal property structure for rapidly expanding mining activities in the western United States.[19] The Mining Act allowed prospectors to register exclusive mining claims with the federal government when they discovered gold on federal land.[20] To this day, the Mining Act's system allows gold miners to register new mining claims, including in California.[21]

The U.S. Supreme Court addressed federal preemption of state regulation under the Mining Act in *Granite Rock*.[22] In that case, a limestone-mining company argued that a California permitting requirement for mining on federal land was facially preempted by the Mining Act and several other federal laws that provided for the management of federal lands.[23] The Court rejected the company's argument, holding that a state permit requirement was not necessarily preempted by any federal law or regulation.[24] The Court said little about the Mining Act explicitly, beyond reasoning that the Mining Act could not have embodied any legislative intent regarding environmental regulation because the topic of environmental regulation was not yet on Congress's mind in 1872.[25] In contrast, without deciding the issue, the Court assumed that the Federal Land Policy and Management Act of 1976 and the National Forest

16. U.S. CONST. art. IV, § 3, cl. 2 ("The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.").

17. *Granite Rock*, 480 U.S. at 580–81. This is unlike Congress's power to regulate interstate commerce under the Commerce Clause, which has a prohibitive effect on states even when Congress does not act. *See* United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 338 (2007).

18. *Granite Rock*, 480 U.S. at 580–81.

19. Mining Act of 1872, ch. 152, 17 Stat. 91 (codified as amended at 30 U.S.C. §§ 22–54 (2012)); *Rinehart*, 377 P.3d at 825–26. Congress's mining regulation proceeded over a number of years beginning in 1866, culminating in the Mining Act of 1872. *Rinehart*, 377 P.3d at 825–26.

20. *See* 30 U.S.C. § 26 (2012); *see also Rinehart*, 377 P.3d at 825–26.

21. *See* BUREAU OF LAND MGMT., MINING CLAIMS AND SITES ON FEDERAL LAND 7 (2016), https://www.blm.gov/sites/blm.gov/files/documents/files/PublicRoom_Mining_Claims_Brochure-2016.pdf.

22. *Granite Rock*, 480 U.S. at 582–84.

23. *Id.* at 575, 577.

24. *Id.* at 593.

25. *Id.* at 582. The mining company conceded this point in *Granite Rock*, but the miner in *Rinehart* did not; this difference partly explains the *Rinehart* court's more searching study of the Mining Act. *See id.*; *Rinehart*, 377 P.3d at 823–24.

Management Act[26] preempted any state land-use planning that prevented mining on federal land.[27] However, the Court distinguished land-use planning from environmental regulation, and held that states could issue environmental regulations for mining on federal land (including requiring permits) without being preempted.[28] While the Court gave rough definitions distinguishing land-use planning from environmental regulation, it admitted that there was no bright line, and it hypothesized the possibility of "a state environmental regulation so severe that a particular land use would become commercially impracticable."[29]

In the wake of *Granite Rock*, most courts have upheld state mining regulations facing preemption challenges.[30] A notable exception was the Eighth Circuit's decision in *South Dakota Mining Ass'n v. Lawrence County*, where the court held that the Mining Act preempted a local ordinance which banned a particular mining method.[31] The Eighth Circuit did not cite *Granite Rock*'s language regarding commercial impracticability, but the court noted that the mining method in question was the "only practical way" to mine certain resources and that the ordinance was therefore a "de facto ban" on mining itself.[32] The Eighth Circuit further concluded that the Mining Act had an affirmative purpose of encouraging mining,[33] and held that the local "de facto ban" was preempted because it was an obstacle to this Congressional purpose.[34]

II. ANALYSIS

In *Rinehart*, the California Supreme Court found that the Mining Act did not preempt California's temporary moratorium on suction dredging,[35] reversing the court of appeal holding that the moratorium would be preempted if it rendered mining "commercially impracticable."[36] The California Supreme Court rejected the court of appeal's interpretation of the Mining Act's purpose, holding that the Mining Act was concerned with regulating miners' rights to

26. Federal Land Policy and Management Act of 1796, 43 U.S.C. §§ 1701–87 (2012); National Forest Management Act, 16 U.S.C. §§ 1600–14 (2012).

27. *Granite Rock*, 480 U.S. at 585.

28. *Id.* at 588–89.

29. *Id.* at 587.

30. *See, e.g.*, Pringle v. Oregon, No. 2:13-CV-00309-SU, 2014 WL 795328, at *8 (D. Or. Feb. 25, 2014) (upholding state permitting requirements for suction dredging); Beatty v. Wash. Fish & Wildlife Comm'n, 341 P.3d 291, 307 (Wash. Ct. App. 2015) (upholding state restrictions on suction dredging).

31. 155 F.3d 1005, 1011 (8th Cir. 1998).

32. *Id.*

33. *Id.* at 1010.

34. *Id.* at 1011.

35. *See* People v. Rinehart, 377 P.3d 818, 820 (Cal. 2016). More briefly, the court also discussed and rejected Rinehart's argument that the moratorium was preempted by the Surface Resources and Multiple Use Act of 1955. *Id.* at 822, 830–32.

36. People v. Rinehart, 178 Cal. Rptr. 3d 550, 562 (Ct. App. 2014).

title, not with regulating mining activities themselves.[37] But at the same time, the California Supreme Court seemed to ignore another issue that was central to the court of appeal's decision: whether federal law preempts state regulations like the moratorium if they render mining "commercially impracticable."[38] By sidestepping this issue, the court avoided addressing the difficult aspects of *Granite Rock*, particularly the problematic distinction between land use planning and environmental regulation.[39] Nonetheless, the court's reading of the Mining Act implicitly rejected a commercial impracticability test for state environmental regulations. In this way, the court's thorough analysis of the Mining Act served as a tool for protecting California's moratorium without explicitly engaging with the hard problems of *Granite Rock*.

A. Rinehart*'s Interpretation of the Mining Act*

The California Supreme Court's holding relied primarily on its rejection of Rinehart's claim that the Mining Act represents the "affirmative intent [of Congress] to grant individuals a federal right to mine, and requires preemption of state laws whenever they unduly infringe that right."[40] Through an investigation of the Mining Act's text and history, the court made three key determinations about the Act's purpose and intended preemptive effect.

First, the court found that Congress passed the Mining Act to solve a particular problem—"the delineation of the real property interests of miners vis-à-vis each other and the federal government."[41] The Mining Act established a system for miners to register their claims, and in some cases acquire title to land, to the exclusion of other interested parties.[42] Diving into legislative history, the court determined that the Mining Act was the end product of a postbellum debate between eastern and western legislators over whether mining land should be sold at auction (the eastern proposal) or be claimable by miners actually on the land (the western proposal, which ultimately prevailed).[43] From the text and legislative history, the court thus concluded that while Congress hoped to facilitate "the orderly development of the nation's valuable mineral resources," the focus was not on regulating the mining itself but rather on regulating "the allocation of real property interests" among potential claimants and the federal government.[44] Nothing in California's moratorium, the court

37. *Rinehart*, 377 P.3d at 826–27. The California Supreme Court also thereby rejected the Eighth Circuit's interpretation of the Mining Act, since the court of appeal in *Rinehart* had explicitly followed *Lawrence County*'s interpretation of the Mining Act's purpose. *See Rinehart*, 178 Cal. Rptr. 3d at 561.

38. *Rinehart*, 178 Cal. Rptr. 3d at 562.

39. *See* Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 587–89 (1987).

40. *Rinehart*, 377 P.3d at 825.

41. *Id.* at 824.

42. 30 U.S.C. §§ 26, 29, 37.

43. *Rinehart*, 377 P.3d at 825–26. This debate originally gave rise to the Mining Act of 1866, but the relevant language was later incorporated into the Mining Act of 1872. *See id.*

44. *Id.* at 824, 826.

suggested, altered or jeopardized this system for allocating property rights.[45] The moratorium regulated the use of certain kinds of mining tools, but left a miner's property rights undisturbed relative to other potential claimants.[46]

Second, the California Supreme Court concluded that while Congress surely sought to encourage mining for valuable resources, it never intended to displace local or state regulations of mining activity.[47] California had been regulating aspects of mining at least as far back as 1860 (twelve years prior to the Mining Act), and the court noted that the Mining Act's property guarantees are explicitly conditioned on compliance "with State, territorial, and local regulations."[48] The only exception, consistent with the California Supreme Court's analysis of the Mining Act's purpose, is the Act's express displacement of local laws concerning title to property.[49] The court highlighted additional language supporting congressional deference to local law, including a clause directing that mining on federal land be governed by "local customs or rules of miners."[50] From this evidence, the court concluded that Congress intended the Mining Act to create merely an assurance of miners' property rights, not a "right to mine, immune in whole or in part from curtailment by [state environmental] regulation."[51]

Finally, the court determined that environmental regulation of mining in California was a longstanding practice approved not only by courts but also by Congress.[52] In particular, the court discussed hydraulic mining, an industrial method of gold mining in the late nineteenth century which had the undesirable side effect of causing enormous floods.[53] In 1884, a federal judge in *Woodruff v. North Bloomfield Gravel Mineral Co.* issued an injunction effectively banning hydraulic mining.[54] The *Rinehart* court noted that *Woodruff*, more than a century earlier, had similarly rejected preemption arguments under the Mining Act.[55] The California Supreme Court then cited congressional reports and appropriations bills suggesting that Congress, not long after the passage of the Mining Act, acquiesced to *Woodruff*'s ban on hydraulic mining.[56] The court thereby inferred that Congress perceived no conflict between the Mining Act and a ban on a particular mining method.[57]

45. *Id.* at 826–27.
46. *Id.* at 821, 827.
47. *Id.* at 826–27.
48. *Id.* at 824.
49. *Id.*
50. *Id.*
51. *Id.* at 826.
52. *Id.* at 827–28.
53. *Id.* at 827.
54. 18 F. 753, 756, 813 (C.C.D. Cal. 1884); *see also Rinehart*, 377 P.3d at 827.
55. *Rinehart*, 377 P.3d at 827–28.
56. *Id.* at 827–28.
57. *Id.* at 828–29.

B. Rinehart*'s Avoidance of Granite Rock*

While the California Supreme Court gave a thorough analysis of the Mining Act's text and history, it largely avoided any discussion of the key controlling precedent, *Granite Rock*. The court described *Granite Rock* as having rejected a categorical challenge to state permit requirements while leaving open "the possibility of future preemption challenges to specific permit requirements or . . . refusals to issue a permit."[58] The court also noted *Granite Rock*'s remark that the Mining Act mostly predated Congressional consideration of environmental regulation.[59] But after these statements, *Granite Rock* disappears from the *Rinehart* opinion. One explanation is that Rinehart's challenge focused primarily on the Mining Act, about which *Granite Rock* said little explicitly.[60] Yet the court of appeal decided the case by following a purported commercial impracticability test from *Granite Rock*.[61] Given this procedural posture, the California Supreme Court's avoidance of *Granite Rock* is notable.

By sidelining *Granite Rock*, the court avoided ruling on *Granite Rock*'s significant ambiguities. Most conspicuously, the court did not express any opinion about the existence or applicability of a commercial impracticability test for state mining regulations,[62] even though the court of appeal found the test decisive.[63] Such a test, if required, could have significant and perhaps perverse consequences: it might, for example, forbid regulations on those mining claims that are *least* economically viable.[64] More generally, *Granite Rock* applied the distinction between permissible environmental regulations and impermissible land-use planning in its discussion of the land-use statutes (the Federal Land and Policy Management Act and the National Forest Management Act).[65] The California Supreme Court avoided addressing whether this distinction applies to challenges, like Rinehart's, which assert that a state action is preempted by the Mining Act but not the land-use statutes. If this distinction *is* relevant in cases like Rinehart's, the thorny question is then whether California's moratorium is merely an environmental regulation or whether it is a de facto land-use plan. But while this question was debated extensively in the briefs and at oral argument,[66] the court completely skirted the issue; the phrase "land use" does not even appear in the opinion.[67]

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58. *Id.* at 823–24.
59. *Id.* at 824.
60. *See* Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 582 (1987).
61. People v. Rinehart, 178 Cal. Rptr. 3d 550, 562 (Ct. App. 2014).
62. *See Rinehart*, 377 P.3d at 829–30.
63. *Rinehart*, 178 Cal. Rptr. 3d at 562.
64. *See* Application for Leave to File Amici Curiae Brief in Support of the People of the State of Cal.; Proposed Brief of Law Professor John D. Leshy et al. at *18, People v. Rinehart, 377 P.3d 818 (Cal. 2016) (No. S222620), 2015 WL 4262018.
65. *Granite Rock*, 480 U.S. at 587–88.
66. *See, e.g.*, People's Opening Brief on the Merits at *29–31, *Rinehart*, 377 P.3d 818 (Cal. 2016) (No. S222620), 2015 WL 4039102; Defendant & Appellant Brandon Rinehart's Answer to the Brief

Despite not interpreting *Granite Rock* expressly, however, the California Supreme Court's holding implicitly denied the applicability of any commercial impracticability test to the Mining Act. California's moratorium on suction dredging was a temporary regulation targeted at particular well-documented harms, but it is hard to see in the court's reading of the Mining Act how any state environmental regulation, no matter its breadth or economic impact, would be preempted.[68] If Congress's aim was indeed purely to regulate rights to title, without upsetting environmental regulations, then there is no reason in principle that stricter regulations, such as a permanent ban on suction dredging, or bans on other forms of mining, would be preempted under the Mining Act. Similarly, the court seemed to suggest that there was no preemptive problem in the *Woodruff* court's de facto ban on hydraulic mining, despite the fact that hydraulic mining was "of far greater economic significance than the suction dredging at issue here."[69] Thus, while *Rinehart* did not explicitly respond to *Granite Rock*'s lingering questions, it indicated the California Supreme Court's view that *Granite Rock* does not foreclose a strong exercise of independent state power to protect the environment, even when that exercise impacts the economic viability of federal mining claims.

CONCLUSION

Rinehart has filed a petition for a writ of certiorari in the U.S. Supreme Court, asking the Court to resolve a conflict between *Rinehart* and the Eighth Circuit's decision in *Lawrence County*.[70] Given *Rinehart*'s thorough analysis of the Mining Act and the court's restraint in declining to interpret *Granite Rock* as demanding any particular outcome, it seems likely that *Rinehart* will be allowed to stand.[71] On the other hand, the U.S. Supreme Court has invited the Acting Solicitor General to file a brief in the case expressing the views of

Amicus Curiae Filed by the United States at *5–7, *Rinehart*, 377 P.3d 818 (Cal. 2016) (No. S222620), 2015 WL 7313502.

67. *See Rinehart*, 377 P.3d at 820–32.

68. Perhaps a ban on *all* forms of mining might still be preempted. *See* Eric Biber, *State Regulation of Environmental Harms on Federal Lands*, LEGAL PLANET (Sept. 20, 2016), http://legal-planet.org/2016/09/20/state-regulation-of-environmental-harms-on-federal-lands/. Such a "regulation" is unlikely to be issued, however. Prior to the decision in *Rinehart*, the California Legislature replaced the temporary moratorium with an enhanced permitting system for suction dredging. *Id.* Under the new system, permits require an agency finding of no significant impacts on fish and wildlife. *Id.* As before, no regulations inhibit mining methods such as panning. *See id.*

69. *Rinehart*, 377 P.3d at 828.

70. Petition for Writ of Certiorari, Rinehart v. California, No. 16-970 (Feb. 6, 2017); *see* S.D. Mining Ass'n, Inc. v. Lawrence Cty., 155 F.3d 1005, 1011 (8th Cir. 1998) (holding that a state mining regulation was preempted by the Mining Act because the regulation banned the "only practical way" the land could be mined).

71. The court's claim not to be applying the presumption against preemption may similarly discourage the U.S. Supreme Court from taking the case. *See Rinehart*, 377 P.3d at 823.

the federal government, suggesting the Court has some interest in *Rinehart*.[72] If preserved, however, the opinion will give state agencies considerable confidence in setting forth any future regulations of mining on federal land that they deem necessary. More generally, as California enters a period in which its environmental protection objectives may be at odds with the priorities of the Trump Administration, conflicts between state and federal entities over environmental issues will likely become more frequent. *Rinehart* signals that the California Supreme Court may be a valuable ally in efforts to safeguard the State of California's strong environmental laws from the reach of federal preemption.

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72. *See* Richard Frank, *Look Out Below!*, LEGAL PLANET (May 15, 2017), http://legal-planet.org/2017/05/15/look-out-below/.