



Volume 29 | Issue 2

Article 5

12-6-2018

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Recommended Citation

Rohan Mohanty, *Mining for Answers: The Supreme Court of California Addresses the State's Ability to Exercise its Police Powers on Federal Land in People v. Rinehart*, 29 Vill. Envtl. L.J. 283 (2018).

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2018]

MINING FOR ANSWERS: THE SUPREME COURT OF
CALIFORNIA ADDRESSES THE STATE'S ABILITY TO
EXERCISE ITS POLICE POWERS ON FEDERAL LAND IN
PEOPLE V. RINEHART

I. THE STEPPING STONE: INTRODUCTION TO THE ISSUES
SURROUNDING *PEOPLE V. RINEHART*

Beginning in 1848, gold discovery in California led to rapid population growth and expansion in the western United States.¹ Today, the prospect of discovering gold persists for many who engage in mining activities in western states such as California.² While a potentially prosperous activity, gold mining leaves an adverse environmental footprint on the land and waters where mining occurs.³ Early miners, unknowing of the risk, deposited mercury into the waters.⁴ Today, the remaining mercury wreaks havoc on the ecosystems of western United States rivers.⁵

The predominant federal law governing mineral mining in the United States is the Mining Law of 1872 (the Act).⁶ Congress enacted the Act to promote the exploration of valuable minerals such as gold, but the preeminent federal mining statute contains very few environmental protections.⁷ Environmental interest groups frequently criticize the law for being outdated and “inimical to today’s needs and values.”⁸ The lack of environmental protections con-

1. See *California Gold Rush (1848-1858)*, HARVARD UNIV. LIBRARY OPEN COLLECTIONS PROGRAM, <http://ocp.hul.harvard.edu/immigration/goldrush.html> (last visited Feb. 3, 2018) (describing early years of gold discovery in United States).

2. See Adrienne DelCotto, *Suction Dredge Mining: The United States Forest Service Hands Miners the Golden Ticket*, 40 ENVTL. L. 1021, 1024 (2010) (discussing gold mining in modern times).

3. See *id.* (noting that mining activities have caused environmental issues).

4. See *id.* (explaining environmental hazards caused by mining in mid to late nineteenth century).

5. See *id.* at 1026 (describing environmental impacts of modern mining techniques).

6. See Tyler L. Weidlich, Note, *The Mining Law Continuum – Is There a Contemporary Prospect for Reform?*, 44 BRANDEIS L.J. 951, 953 (2006) (introducing Mining Law of 1872).

7. See DelCotto, *supra* note 2, at 1025 (noting lack of environmental protection in Mining Law of 1872).

8. Andrew P. Morriss et al., *Homesteading Rock: A Defense of Free Access Under the General Mining Law of 1872*, 34 ENVTL. L. 745, 749 (2004) (citing Christine Knight, Comment, *A Regulatory Minefield: Can the Department of Interior Say ‘No’ to A Hardrock Mine?*, 73 U. COLO. L. REV. 619, 626 (2002)) (listing criticisms of Mining Law of 1872).

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tained in the Act, coupled with increased knowledge of the pollutants produced by certain types of mining and the enactment of subsequent regulations to curb environmental destruction, has led to frequent conflict between miners and those attempting to protect the environment.⁹ As such, administrative agencies and the federal government have focused on protecting lands and waters from destruction.¹⁰

*People v. Rinehart*¹¹ stems from the aforementioned conflict, involving a suit between a miner and the State of California over the “competing desire[]” of resources.¹² California attempted to minimize the adverse environmental impacts of mining by requiring permits for a popular form of mining known as suction dredging.¹³ In 2009, the California legislature imposed a temporary moratorium on the issuance of these permits based on legislative findings that “suction or vacuum dredge mining results in various adverse environmental impacts to protected fish species, the water quality of [its] state, and the health of the people of [its] state.”¹⁴ Appellant, Brandon Rinehart (Rinehart), was convicted of “possession and use of an unpermitted suction dredge” under California Fish and Game Code section 5653 because he was operating a suction dredge without a permit, which he could not obtain due to the moratorium.¹⁵ Rinehart subsequently appealed the conviction, claiming the Act preempted the contrary state law mandating the moratorium.¹⁶ The Supreme Court of California held that the Act did not preclude California’s suction dredging moratorium because the Act did not grant a federal right to mine free from the state’s exercise of its police power.¹⁷

9. For a further discussion of case law stemming from federal mining laws, see *infra* notes 80-101 and accompanying text.

10. See Weidlich, *supra* note 6, at 954-56 (explaining various reforms providing environmental protections for mining activities).

11. 377 P.3d 818 (Cal. 2016).

12. *Id.* at 820 (outlining basis of conflict between Brandon Rinehart and State of California).

13. See *id.* at 820-21 (describing California Fish and Game Code section 5653). This section allows the Department of Fish and Wildlife to issue permits as long as the “dredging would not harm fish.” See *id.* For a description of suction dredging, see *infra* note 25 and accompanying text.

14. *Id.* at 821 (explaining background on case).

15. See *id.* at 821-22 (stating Rinehart’s charges).

16. See *Rinehart*, 377 P.3d at 820 (discussing Rinehart’s legal argument). Rinehart relied on a provision in the Mining Act of 1982, which allows for “exploration and purchase” of U.S. lands by U.S. citizens under certain conditions. See 30 U.S.C. § 22.

17. See *Rinehart*, 377 P.3d at 820 (discussing hierarchy of states’ police powers and federal law).

This Note assesses the various environmental, legislative, and constitutional issues surrounding *People v. Rinehart*.¹⁸ Part II of this Note discusses the facts surrounding *Rinehart*, the Supreme Court of California's holding, and the procedural history of the case.¹⁹ Part III provides a background of California state law, the Mining Law of 1872, and the doctrine of preemption.²⁰ Part IV discusses the Supreme Court of California's opinion in *Rinehart*.²¹ Part V analyzes the Supreme Court of California's decision.²² Finally, Part VI discusses the broader impact this case may have on issues of federalism with respect to the regulation of federal lands in the United States.²³

II. BETWEEN A ROCK AND A HARD PLACE: FACTS DESCRIBING THE CONFLICT BETWEEN RINEHART AND THE STATE OF CALIFORNIA

In 2012, Brandon Rinehart was charged with possession and unpermitted use of a suction dredge, pursuant to California Fish and Game Code section 5653.²⁴ A suction dredge is an instrument used by miners to extract gold from waterways, through a process called suction dredging.²⁵ The California Fish and Game Code states, *inter alia*, "The use of vacuum or suction dredge equipment by a person in a river, stream, or lake of this state is prohibited, except as authorized under a permit issued to that person by the department in compliance with the regulations adopted pursuant to Section 5653.9."²⁶ Because of a moratorium on the issuance of suction dredging permits in California, Rinehart was without a per-

18. For a further discussion of the issues in *People v. Rinehart*, see *infra* notes 45-101 and accompanying text.

19. For a further discussion of the facts, procedural history, and holding in *People v. Rinehart*, see *infra* notes 24-44 and accompanying text.

20. For a further discussion of the background of California state law, the Act, and federal preemption, see *infra* notes 45-101 and accompanying text.

21. For a further discussion of the Supreme Court of California's analysis in *People v. Rinehart*, see *infra* notes 102-150 and accompanying text.

22. For a further discussion of the critique of the Supreme Court of California's decision, see *infra* notes 151-191 and accompanying text.

23. For a further discussion of the potential impact of *People v. Rinehart*, see *infra* notes 192-213 and accompanying text.

24. *People v. Rinehart*, 377 P.3d 818, 821 (Cal. 2016) (outlining Rinehart's charges).

25. See DelCotto, *supra* note 2, at 1026-27 (describing suction dredge instrument). A suction dredge uses an engine-powered hose to remove sediment from the floor of a waterway; the sediment passes up through the hose and then through a sluice box, where gold is trapped, and the other material is released back into the waterway. *Id.*

26. CAL. FISH & GAME CODE § 5653 (2016) (quoting California statute that criminalizes use of suction dredging equipment without permit).

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mit when he was cited while dredging in Plumas National Forest.²⁷ Rinehart did, however, have a federal mining claim on the portion of the land on which he was dredging.²⁸ The Mining Act of 1872, “allow[s] United States citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals.”²⁹ The discovery of minerals “followed by the minimal procedures required to formally ‘locate’ the deposit, gives an individual the right of exclusive possession of the land for mining purposes, [] i.e., a mining claim.”³⁰ Accordingly, Rinehart believed that his federal mining claim superseded any requirement by the state that he have a permit in order to operate his suction dredge.³¹ Rinehart filed a demurrer contending that the suction dredge permit requirement in section 5653 of the Fish and Game Code, as well as the then recently enacted moratorium on the issuance of such permits, prevented him from “using the only commercially practicable method of extracting gold from his mining claim.”³² Further, Rinehart argued that Congress had granted him a right to mine on the land that made up his mining claim without “material interference,” and that California’s limitations on the use of suction dredges “should be preempted as an obstacle to Congress’s purposes and objectives.”³³

A trial court overruled Rinehart’s demurrer, rejecting as a matter of law the argument that California state law should be preempted by federal law.³⁴ The trial court did not allow Rinehart to

27. See Brandon Rinehart, *Why I’m in Court*, PEOPLE V RINEHART, <http://peoplevinehart.org/why-im-in-court/> (last visited Aug. 29, 2017) [hereinafter *Why I’m in Court*] (describing Rinehart’s arrest).

28. *Id.* (explaining Rinehart’s belief that his federal mining claim gave him right to mine on land and that his federal right superseded California state law requiring permits). Rinehart possessed an “unpatented claim[, which] is a possessory interest in a particular area solely for the purpose of mining[, which] may be contested by the government or a private party.” See *Rinehart*, 377 P.3d at 821 n.2 (citing *Clouser v. Espy*, 42 F.3d 1522, 1525 n.2 (9th Cir. 1994) (defining unpatented claims)).

29. *Rinehart*, 377 P.3d at 821 (quoting *United States v. Locke*, 471 U.S. 84, 86 (1985)) (citing 30 U.S.C. § 22 (1872)) (explaining general mining laws enacted in nineteenth century maintain relevance today and allow prospective miners to locate and develop minerals on federal land).

30. *Id.* (quoting *Locke*, 471 U.S. 84, 86 (1985)) (citing 30 U.S.C. § 26 (1872)) (describing procedure of obtaining mining claim by locating mineral deposit).

31. See *Why I’m in Court*, *supra* note 27 (explaining Rinehart’s belief that federal regulations superseded state regulations).

32. *Rinehart*, 377 P.3d at 821 (explaining content of Rinehart’s demurrer).

33. *Id.* (describing Rinehart’s belief that federal mining law superseded California state law).

34. *Id.* (stating trial court’s reasoning for rejecting Rinehart’s demurrer).

present testimony in support of this argument.³⁵ Rinehart waived a jury trial and received a bench trial.³⁶ Subsequently, Rinehart was convicted on two misdemeanors, given three years' probation, and fined \$832.³⁷

Rinehart appealed to California's Court of Appeal in 2013.³⁸ The Court of Appeal reversed the trial court's ruling.³⁹ Agreeing with Rinehart, the court concluded that the "federal mining law should be interpreted as preempting any state law that unduly hampers mining on federal land."⁴⁰ The court also found that "Rinehart had made a colorable argument that (1) the state regulatory scheme amounted to a de facto ban on suction dredging and (2) this ban rendered mining on his claim 'commercially impracticable.'"⁴¹ As a result, the Court of Appeal remanded the case for further proceedings.⁴² The state petitioned for and was granted review of the Court of Appeal's ruling.⁴³ The Supreme Court of California reversed the Court of Appeal's decision, noting that while the federal mining law reflects Congress's intent to provide miners with the ability to claim title to land, the law does not guarantee a right to mine that is immune from the states' police powers.⁴⁴

III. DOWN THE RIVER: BACKGROUND ON CALIFORNIA STATE LAW AND FEDERAL MINING STATUTES

The discovery of gold and the promise of prosperity during the gold rush of the nineteenth century encouraged an influx of migration to the western United States.⁴⁵ In fact, from 1848 to 1850, the population of San Francisco skyrocketed from one thousand to

35. *Id.* (stating trial court's exclusion of testimony Rinehart would have used in support of his defense).

36. *Id.* (explaining Rinehart's waiver of his right to jury trial).

37. *Rinehart*, 377 P.3d at 822 (describing Rinehart's conviction and sentence by trial court); *see also Why I'm in Court*, *supra* note 27 (stating amount of Rinehart's fine).

38. *Rinehart*, 377 P.3d at 822 (explaining Rinehart's appeal to Court of Appeal); *see also Why I'm in Court*, *supra* note 27 (stating date of appeal).

39. *Rinehart*, 377 P.3d at 822 (stating Court of Appeal's reversal).

40. *Id.* (quoting Court of Appeal's belief that federal law mining law should supersede California's state law requiring permits for suction dredging).

41. *Id.* (quoting *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 587 (1987)) (quoting Court of Appeal's reasoning in support of Rinehart's argument).

42. *Rinehart*, 377 P.3d at 822 (stating Court of Appeal remanded case for further proceedings).

43. *Id.* at 820 (stating Supreme Court of California's grant of state's petition for review).

44. *See id.* (describing Supreme Court of California's holding).

45. *See California Gold Rush (1848-1858)*, *supra* note 1 (providing background on history of gold rush).

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over twenty thousand people.⁴⁶ Due to increased mineral exploration in the American West, Congress enacted mining laws in 1872 which made “all valuable mineral deposits in lands belonging to the United States . . . free and open to exploration and purchase.”⁴⁷ The Mining Law of 1872 is still in effect today with minimal changes.⁴⁸ The promise to strike gold, however, has led to environmental concerns stemming from mercury remaining in the very waters that were, and still are used to prospect for gold.⁴⁹ Tissues of plants, animals, and other organisms can absorb the mercury from waters and streams.⁵⁰ The increased mercury levels in these organisms can eventually make them deadly for human consumption.⁵¹ Cleanup of these waters, if done at all, is completed years after damage has taken place and is frequently funded by taxpayers.⁵² This, in turn, has caused many western states, such as California, to enact environmental regulations to protect aquatic ecosystems that are at risk of being negatively affected by mining.⁵³ The regulation of mining has led to inevitable conflict between miners and the governments enacting such regulations.⁵⁴ One of the main contentions in this ongoing legal battle is the issue of federalism: whether the Act precludes the application of the state law.⁵⁵

A. California State Law

California has regulated suction dredging in the state for the last fifty years.⁵⁶ Originally enacted as Fish and Game Code section

46. *Id.* (noting population increases due to gold rush).

47. 30 U.S.C. § 22 (1872) (quoting language of Mining Law of 1872); *see also* Andrew P. Morriss et al., *Homesteading Rock: A Defense of Free Access Under the General Mining Law of 1872*, 34 ENVTL. L. 745, 761 (2004) (explaining Mining Law of 1872 was motivated by mineral rushes in nineteenth century).

48. *See* Morris, *supra* note 8, at 751-52 (describing lack of reform to Mining Law of 1872).

49. For a discussion of the environmental impacts of the gold rush, *see supra* notes 3-5 and accompanying text.

50. *See* DelCotto, *supra* note 2, at 1025 (describing adverse environmental impact of mercury on aquatic organisms).

51. *See id.* at 1027-28 (explaining damaging effects of mercury in organisms consumed by humans).

52. *See* Weidlich, *supra* note 6, at 952, 957 (explaining cleanup of ecosystems damaged by mining).

53. *See* DelCotto, *supra* note 2, at 1023 (noting states have enacted environmental regulations to help combat adverse environmental effects of mining).

54. For a further discussion of case law stemming from federal mining laws, *see infra* notes 80-101 and accompanying text.

55. For a further discussion of federalism conflicts that arise from state law and Mining Law of 1872, *see infra* notes 66-76 and accompanying text.

56. *People v. Rinehart*, 377 P.3d 818, 820 (Cal. 2016) (describing California’s history of suction dredging regulation).

5653, the regulation authorized California's Department of Fish and Wildlife "to issue permits for suction dredging, so long as it determined the dredging would not harm fish."⁵⁷ A violation for dredging without a permit would result in a misdemeanor.⁵⁸ Future amendments of section 5653 gave the Department of Fish and Wildlife "authority to designate particular waterways off-limits to suction dredging and made possession of a suction dredge near such waters unlawful."⁵⁹

In 2009, as a result of concerns of dredging's effects on endangered coho salmon habitats, the California "[l]egislature imposed a temporary moratorium on the issuance of dredging permits pending further environmental review by the [d]epartment."⁶⁰ The moratorium on suction dredging, which cited "various adverse environmental impacts to protected fish species, the water quality of [California], and the health of the people of [California]," went into effect immediately.⁶¹ In 2011, the legislature set a sunset provision that indicated if "environmental review and new regulations were not complete" by June 30, 2016, the moratorium would no longer be in effect.⁶² In 2012, the Department of Fish and Wildlife concluded "it lacked regulatory authority to address fully the environmental impacts of suction dredging."⁶³ In 2015, the legislature removed the 2016 sunset provision and enacted legislation clarifying that the Department of Fish and Wildlife and other states agencies' possessed the regulatory authority to oversee and regulate suction dredge permits.⁶⁴ The moratorium on the issuance of these permits remains in place.⁶⁵

B. Preemption of State Law on Federal Land

The United States Constitution's Property Clause vests Congress with the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."⁶⁶ With respect to the Property Clause, both the state and

57. *See id.* (explaining origins of section 5653 of the Fish and Game Code).

58. *See id.* at 820-21 (describing sanctions for violating section 5653).

59. *See id.* at 821 (citation omitted) (describing changes to section 5653).

60. *See id.* (explaining basis for moratorium on issuance of suction dredging permits).

61. *See Rinehart*, 377 P.3d at 821 (explaining reasoning for moratorium).

62. *See id.* (describing sunset provision on moratorium).

63. *See id.* (discussing findings from review).

64. *See id.* (noting legislation was enacted to give agency power to administer moratorium).

65. *Id.* (explaining current status of moratorium).

66. U.S. CONST. art. IV, § 3, cl. 2 (outlining Constitution's Property Clause).

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federal government are sovereign.⁶⁷ States are “‘free to enforce [their] criminal and civil laws’ on federal land, unless those laws conflict with federal legislation or regulation; in the event of a conflict, of course, ‘state laws must recede.’”⁶⁸ The Property Clause, unlike the Commerce Clause, does not have a dormant aspect.⁶⁹ When Congress is silent on the issue, states may exercise their police powers on federal land, so long as it is within the state’s territorial boundaries.⁷⁰ “Congress must act affirmatively” in order “to displace the application of state law on federal land.”⁷¹ When state and federal laws conflict, “state laws must recede.”⁷²

Obstacle preemption is a principle in which federal law will preempt state law.⁷³ The principle of obstacle preemption articulates “that a state may not adopt laws impairing ‘the accomplishment and execution of the full purposes and objectives of Congress.’”⁷⁴ Establishing obstacle preemption

requires proof Congress had particular purposes and objectives in mind, a demonstration that leaving state law in place would compromise those objectives, and a reason to discount the possibility the Congress that enacted the legislation was aware of the background tapestry of state law and content to let that law remain as it was.⁷⁵

The Supreme Court has held that there is a “strong presumption against [obstacle] preemption in areas where the state has a firmly established regulatory role.”⁷⁶

67. See *Rinehart*, 377 P.3d at 822 (explaining dual sovereignty of Property Clause).

68. *Id.* (quoting *Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976)) (explaining extent of state exercise of police power on federal lands).

69. See *id.* (outlining differences between Property Clause and Commerce Clause in regards to state sovereignty). The “dormant” Commerce Clause provides that states cannot discriminate against or burden interstate commerce because of Congress’s grant to regulate commerce “among the several states.” See *Commerce Clause*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/commerce_clause (last visited Feb. 25, 2018).

70. See *Rinehart*, 377 P.3d at 822 (illustrating relevance of lack of dormant aspect in Property Clause).

71. *Id.* (explaining requirements for federal law to displace state law).

72. *Id.* (quoting *Kleppe v. New Mexico*, 426 U.S. at 543) (explaining federal law is supreme when it conflicts with state law).

73. See *id.* (describing obstacle preemption).

74. *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)) (describing standard for obstacle preemption).

75. *Rinehart*, 377 P.3d at 823 (quoting *Quesada v. Herb Thyme Farms, Inc.*, 361 P.3d 868, 877 (2015)) (discussing elements of obstacle preemption).

76. *Id.* (noting Supreme Court has traditionally applied strong presumption against preemption of state law).

C. Preemption of Federal Mining Laws

The Mining Law of 1872 remains the principal federal mining regulation today.⁷⁷ The Act allows United States citizens to enter freely onto federal land, explore for valuable minerals, and in certain circumstances, claim a possessory interest on such federal land.⁷⁸ Prior to the Act, miners operating on federal land were not under the jurisdiction of federal law and were “subject instead to state and territorial law[,] and local custom.”⁷⁹

The case law that has ensued since the promulgation of the Act has consistently held that while the Act serves to promote mining, it does not create a federal right to mine on federal land free from the interests of the state.⁸⁰ In *Woodruff v. North Bloomfield Gravel Mining Co.*,⁸¹ California state officials sought an injunction against hydraulic mining companies that were discharging debris into various state waterways.⁸² The defendants in *Woodruff* argued that the environmental impacts were well known and that the Mining Law of 1872 should preempt any state or local legislation because Congress enacted the Act with full knowledge of the consequences of mining.⁸³ The court, however, rejected this argument and found that the purpose of the Act was to grant miners land interests and legalize what had been previously considered trespass.⁸⁴ The court

77. See 30 U.S.C. § 22 (1872) (noting Mining Law of 1872 remains in effect).

78. See *id.* (discussing miners’ rights per Mining Law of 1872).

79. *Rinehart*, 377 P.3d at 825 (citing *Sparrow v. Strong*, 70 U.S. 97, 104 (1865)) (explaining which laws regulated miners prior to Mining Act of 1872).

80. See *Cal. Coastal Comm’n v. Granite Rock Co.*, 480 U.S. 572, 594 (1987) (holding state agency’s mining permit requirement was preempted by Mining Law of 1872); see also *Woodruff v. N. Bloomfield Gravel Mining Co.*, 18 F. 753, 773-34 (C.C.D. Cal. 1884) (holding purpose of Mining Law of 1872 was to grant property rights); see also *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 632-37 (1981) (holding state tax was not preempted by federal mining laws). Although the Mining Law of 1872 was not at conflict in *Commonwealth Edison*, the court used similar logic as in the Mining Law of 1872 cases, determining a federal statutes’ text and legislative history did not suggest a tax on coal mining would conflict with the purpose of the Act. *Id.* But see *S.D. Mining Ass’n, Inc. v. Lawrence County*, 155 F.3d 1005, 1011 (8th Cir. 1998) (holding Mining Law of 1872 preempted local ordinance banning mining in particular area of national park).

81. 18 F. 753 (C.C.D. Cal. 1884).

82. See *id.* at 756 (describing purpose of suit as attempt to restrain miners from discharging debris into waterways).

83. See *id.* at 770-71 (explaining defendant’s assertion that Congress and California state legislature authorized mining knowing mining process produced debris to be released into waters).

84. See *id.* at 773-74 (explaining Mining Law of 1872 established property rights for miners on public lands).

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held miners were not immune to state or local regulation just because the federal mining law existed.⁸⁵

In *California Coastal Commission v. Granite Rock Co.*,⁸⁶ the authoritative Supreme Court case on the Mining Law of 1872, Granite Rock, a mining company, brought suit against a California state agency, contesting the agency's requirement that it receive a permit before it could begin mining operations.⁸⁷ The mining company believed the Mining Act of 1872, among other regulations, preempted the state's permit requirement.⁸⁸ The Court set forth the standard of when federal law should preempt state law, stating "when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress," then state law should be preempted.⁸⁹ The Supreme Court found the Act did not preempt state law because the federal law and state permit requirements were distinguishable and there was no true conflict between state and federal law.⁹⁰ The Court reasoned the permit requirements were an environmental regulation and that Granite Rock could still exercise its rights granted by the Act while also complying with the state's regulations.⁹¹

The preemption argument that stems from *Granite Rock* is that state environmental regulations may frustrate the purposes and objectives of Congress.⁹² As such, cases revolving around the principle of preemption often include an analysis of congressional in-

85. See *id.* at 810 (describing sale to purchasers of lands under Act did not prevent states from exercising police powers over land).

86. 480 U.S. 572 (1987).

87. See generally *id.* at 575-77 (describing facts of case).

88. *Id.* at 577 (explaining Granite Rock's belief that permit requirement was preempted by Mining Law of 1872).

89. *Id.* at 581 (citation omitted) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)) (restating standard for federal preemption of state law).

90. See *id.* at 593 (holding permit requirement was not preempted by Mining Law of 1872); see also *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981) (noting court's reluctance to apply preemption to state and local ordinances); see also *Quesada v. Herb Thyme Farms, Inc.*, 361 P.3d 868, 877 (Cal. 2015) (holding strong presumption against obstacle preemption exists where state has firmly established regulatory role).

91. *Granite Rock*, 480 U.S. at 584-89 (explaining how California's permit requirements did not conflict with Mining Law of 1872).

92. *Id.* at 581 (citing to *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)) (explaining standard for preemption is proper when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

tent.⁹³ In *Lawrence County*,⁹⁴ the Eighth Circuit disallowed a county ordinance that prohibited the issuance of permits for surface metal mining, finding that the ordinance was in conflict with the Mining Law of 1872.⁹⁵ In reaching this conclusion, the Eighth Circuit concluded the congressional intent of the Act was “the encouragement of exploration for and mining of valuable minerals located on federal lands.”⁹⁶ Thus, the court determined the city ordinance, which acted as a de facto ban on mining, frustrated Congress’s intent to promote mining on federal land.⁹⁷

In *Commonwealth Edison Co. v. Montana*,⁹⁸ mining companies alleged that federal statutes designed to encourage the use of coal preempted a state tax on coal extracted from federal lands.⁹⁹ The Supreme Court rejected the appellant’s argument that federal coal laws preempt all state legislation that may have a negative impact on the use of coal.¹⁰⁰ The Court found that nothing in the federal statute’s text or legislative history suggested a tax would conflict with the statute’s purpose.¹⁰¹

IV. SIFTING THROUGH THE SAND: NARRATIVE ANALYSIS OF THE SUPREME COURT OF CALIFORNIA’S DECISION

The Supreme Court of California examined a variety of issues before concluding that the California moratorium on suction dredging was not preempted by Mining Law of 1872 in *Rinehart*.¹⁰² In reaching its conclusion, the court inquired into the Act’s legislative history and employed a textual analysis to determine that contrary to Rinehart’s assertion, the Act did not establish a federal right

93. See generally *People v. Rinehart*, 377 P.3d 818, 823-27 (Cal. 2016) (concluding state law posed no obstacle to congressional objectives espoused in Mining Law of 1872 and 30 U.S.C. § 612(b)); see also *S.D. Mining Ass’n, Inc. v. Lawrence County*, 155 F.3d 1005, 1009-11 (8th Cir. 1998) (noting use of same approach to answer preemption question, but arrival at different conclusion).

94. 155 F.3d 1005 (1998).

95. *Id.* 155 at 1011 (holding Mining Law of 1872 preempted de facto ban on mining).

96. *Id.* at 1010 (discussing Eighth Circuit’s finding of congressional intent).

97. See *id.* at 1011 (discussing Eighth Circuit’s holding).

98. 453 U.S. 609 (1981).

99. See *id.* at 633 (discussing appellant’s argument). The Court did agree with plaintiff that part of the federal statute’s purpose was to encourage use of coal. *Id.*

100. See *id.* at 632-34 (noting that federal coal law did not preempt state tax on coal).

101. See *id.* at 632-37 (discussing court’s conclusion that statute’s language and legislative history were absent evidence that suggested state tax would conflict with federal law).

102. *People v. Rinehart*, 377 P.3d 818, 820 (Cal. 2016) (outlining court’s holding).

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to mine immune from the state's police powers.¹⁰³ Further, the court was able to distinguish the current case from cases that Rinehart relied heavily on for his defense.¹⁰⁴

Judge Kathryn Werdegar of the California Supreme Court began the court's inquiry into Rinehart's case by examining the defendant's obstacle preemption claim that California state law impaired "the accomplishment and execution of the full purposes and objectives of Congress."¹⁰⁵ The court explained that there is a "strong presumption against [obstacle] preemption in areas where the state has a firmly established regulatory role."¹⁰⁶ In determining that the state of California had, and still has, a long-standing interest in protecting the fish and wildlife within the state, the court recalled English common law that established a sovereign held title to the waters within its boundaries.¹⁰⁷ The court then declined to address whether the presumption against preemption existed in this case because "the conclusion [it] would reach with or without the presumption is unchanged."¹⁰⁸ Finding Rinehart had not met the burden of establishing that California's environmental regulations impaired the purposes and objectives of Congress, the obstacle preemption defense did not succeed.¹⁰⁹

The court then addressed Rinehart's principal contention that the state's moratorium on suction dredging presented an obstacle to the Act.¹¹⁰ In doing so, the court conducted a textual analysis of the Act.¹¹¹ The court noted that the "Mining Law of 1872 allows citizens to enter federal land freely and explore for valuable minerals."¹¹² The Act also allows "[l]ocators of valuable minerals [to] obtain a right to possess and develop the area around their claim" and

103. *See id.* at 825-29 (explaining court's finding of no general right to mine).

104. *Id.* at 829-30 (describing court's distinction between current case and previous case law).

105. *See id.* at 822 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)) (describing Rinehart's reliance on principle of obstacle preemption).

106. *Id.* at 823 (citing *Quesada v. Herb Thyme Farms, Inc.*, 361 P.3d 868, 877 (Cal. 2015)) (discussing presumption against obstacle preemption).

107. *See Rinehart*, 377 P.3d at 823 (describing long standing public trust doctrine that established states had right and power to protect and preserve waterways within their borders).

108. *Id.* (noting that presumption against preemption was irrelevant in analysis).

109. *Id.* (describing Rinehart's failure to establish that California's environmental regulations should be displaced by federal law).

110. *Id.* (explaining Rinehart's main defense).

111. *Id.* at 824 (outlining court's textual approach to analyzing Mining Law of 1872).

112. *Rinehart*, 377 P.3d at 824 (describing purpose of Mining Law of 1872).

provides miners the ability to hold formal title to their claim.¹¹³ After a textual analysis of the Act, the court determined “the act as a whole is devoted entirely to the allocation of real property interests among those who would exploit the mineral wealth of the nation’s land, not regulation of the process of exploitation – the mining – itself.”¹¹⁴ The court interpreted that although the Act generally dealt with mining, the Act focused more on the property interests available to miners and less on the regulation of mining itself.¹¹⁵

Noting that the Property Clause of the United States Constitution does not contain a dormant clause, and thus does not prevent states from exercising their police power, the court examined whether any language in the Act itself would exclude California from exercising its police powers on federal land within the state’s territory.¹¹⁶ Within the Act, miners who claim a right to land are granted such right “so long as they comply with the laws of the United States, and with State, territorial, and local regulations.”¹¹⁷ The Act contains one exception, however, which states that “compliance with laws that are ‘in conflict with the laws of the United States governing [claimants’] possessory title’ is not required.”¹¹⁸ The court emphasized that the sole exception pertained to governing title, not to the process of mining itself.¹¹⁹ The court wrote that because the only exception in the Act dealt with property rights, all other areas could be governed by state and local laws without conflicting with federal law.¹²⁰ Furthermore, the court pointed to a passage of the Act that read “[mineral exploration on federal land shall occur subject to] ‘the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.’”¹²¹ The court believed this acknowledgment of state and local law, along with Congress’ unwillingness to expand exceptions regarding

113. *Id.* (outlining rights associated with various provisions within Mining Law of 1872).

114. *Id.* (explaining court’s conclusion that Act dealt with property interests for miners as opposed to act of mining).

115. *See id.* (discussing court’s reading of Act’s text).

116. *See id.* (considering Property Clause’s implications on state’s powers to regulate).

117. *See Rinehart*, 377 P.3d at 824 (quoting 30 U.S.C. § 26) (explaining rights afforded to miners by Act).

118. *Id.* (citation omitted) (quoting 30 U.S.C. § 26) (explaining exception in Act for noncompliance with state and local laws).

119. *See id.* (discussing court’s emphasis of exception in Act).

120. *Id.* (explaining significance of sole exception in Act).

121. *Id.* (quoting 30 U.S.C. § 22) (explaining Act still requires compliance with state and local law so long as they are not in conflict with federal law).

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compliance with state and local laws, reflected Congressional intent to allow state and local laws to govern mining processes.¹²²

The California Supreme Court further supported its conclusion by examining the legislative history surrounding the Mining Act of 1872.¹²³ The Act originates from the 1866 mining law, which was a product of then Nevada Senator William Stewart's proposal to grant miners a right to attain title to the land they mined for a small fee.¹²⁴ Six years later, the legislature passed the Mining Act of 1872 with the declared purpose of "[giving] prospectors tools to secure their real property interests against federal action."¹²⁵ The Act legally authorized local miner rules and allowed state and territorial legislatures to regulate land sales to miners.¹²⁶ The court looked to legislative remarks and determined that the central focus of the Act was to protect miners against Congress's power to potentially sell federal land.¹²⁷ The court believed the legislative history suggested the Act was meant to remove "federal obstacles to mining, and specifically the threat of a property sale, that might deter individual prospectors and mining concerns from investing effort in mineral development."¹²⁸ The court found that while the Act grants miners a real federal property interest, that interest, contrary to Rinehart's belief, is not immune from the exercise of state police power.¹²⁹

In addition to examining the legislative history of the Act, the California Supreme Court looked to historical congressional actions and determined that Congress has demonstrated a reluctance to limit state mining regulations and the Mining Law of 1872.¹³⁰ By the late nineteenth century, hydraulic mining had become a pre-

122. See *Rinehart*, 377 P.3d at 824-25 (summarizing court's textual analysis of Act).

123. *Id.* (considering legislative history in attempt to confirm that no federal right to mine exists, exempt from state police powers).

124. *Id.* at 825-26 (explaining origin of Mining Act of 1872).

125. See *id.* at 826 (noting Mining Act of 1872 was codified after improvements to 1866 mining law).

126. See *id.* (illustrating how Mining Act of 1872 gave authority to miners in west).

127. See *Rinehart*, 377 P.3d at 826 (citing CONG. GLOBE, 39th Cong., 1st Sess. (1866) (statement of *Sen. Stewart*)) (describing court's belief that Mining Act of 1866, whose features were carried into Mining Act of 1872, was meant to protect miners against Congress's power to sell federal land).

128. See *id.* (discussing findings from legislative history).

129. See *id.* at 826-27 (recognizing extent of property rights limited by state police powers).

130. See *id.* (describing congressional acquiescence regarding state mining regulations).

ferred method of mining for gold prospectors.¹³¹ Although the process was effective in mining gold, hydraulic mining produced debris that traveled downstream and led to devastating floods in lower-lying California farm towns.¹³² A series of lawsuits filed by state officials and members of flood impacted communities against hydraulic mining companies eventually led to widespread injunctions on hydraulic mining throughout California.¹³³ Consequentially, the injunctions essentially halted hydraulic mining in the state of California.¹³⁴

Meanwhile, Congress, while endorsing the ban on hydraulic mining, ordered an investigation into whether “the present conflict between the mining and farming sections may be adjusted and the mining industry rehabilitated.”¹³⁵ Ultimately, hydraulic mining in California required a permit conditioned on the assurance that there would be no harm done to rivers and lowland communities.¹³⁶ The permit requirement did not revitalize the hydraulic mining industry, as the process of cleaning debris was deemed economically infeasible.¹³⁷ The hydraulic mining industry never recovered after California state injunctions and Congress’s insistence that the process not cause environmental damage.¹³⁸ According to the Supreme Court of California, this excerpt of mining history

131. See *id.* (citing Robert L. Kelley, *Gold vs. Grain: The Hydraulic Mining Controversy in California’s Sacramento Valley* 23-28 (1959) and citing John D. Leshy, *The Mining Law* 184 (1987)) (discussing shift in mining methods to more efficient processes such as hydraulic mining). Hydraulic mining involves blasting the earth with “large volumes of high-pressure water” to displace rock and sediment in order to extract gold. *Id.*

132. See *Rinehart*, 377 P.3d at 827 (outlining hydraulic mining’s environmental impact). Waste products such as “gravel, silt, and other earthen debris” were byproducts of hydraulic mining that would flow downstream and cause flooding. *Id.*

133. See *id.* at 827-28 (citing *Woodruff v. N. Bloomfield Gravel Mining Co.*, 18 F. 753, 806-09 (C.C.D. Cal. 1984)) (discussing series of suits against hydraulic mining companies). The *Woodruff* court found the purpose of the mining laws was to grant land rights to miners, as well as, legalize what was previously considered trespass, but did not find the Mining Law of 1872 should be preempted by state law, as suggested by the defendants. *Id.*

134. See *id.* at 828 (explaining injunctions prevented and “effectively crippled” hydraulic mining industry in California).

135. See *id.* (citing Act of October 1, 1888, 50th Cong., 1st Sess., Ch. 1057, 25 STAT. 498 (1888)) (explaining Congress’s allocation of budget for investigation in response to concerns of damage from mining).

136. See *id.* (citing 33 U.S.C. § 663) (describing permit requirement as result of congressional investigation into effects of hydraulic mining).

137. See *id.* (discussing obligation to clean one’s debris in order to receive mining permit was deemed economically infeasible for hydraulic miners).

138. See *Rinehart*, 377 P.3d at 828 (explaining hydraulic mining industry never recovered after state injunctions and subsequent actions by Congress).

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demonstrated that the Act did not establish a federal right to mine on federal land without regard of state and environmental interests.¹³⁹ The court, once again, reasoned that Congress did not intend for the Act to be immune from the state's protection of environmentally damaging methods of mining.¹⁴⁰ In fact, Congress supported the de facto ban on mining and encouraged California to require permits that essentially impeded the ability of miners to prospect for gold via hydraulic mining.¹⁴¹

The California Supreme Court's final step in its analysis was to examine case law regarding state restrictions on mining.¹⁴² The court quickly rejected a series of cases brought forth in Rinehart's defense.¹⁴³ The court did not find the case law compelling because all but one case predated *Granite Rock*, two cases involved statutes other than the one at issue in this case, and the remaining cases presented omitted examinations of text, legislative history, and historical context.¹⁴⁴

Specifically, the court's view diverged between the current case and *South Dakota Mining Association Inc. v. Lawrence County*.¹⁴⁵ The Eighth Circuit in *Lawrence County* disallowed an ordinance banning surface mining in an area that included part of a national park because it viewed the ordinance as conflicting with the purposes of the Mining Law of 1872.¹⁴⁶ The Supreme Court of California agreed with the Eighth Circuit's determination that Congress enacted the Act to encourage mining.¹⁴⁷ The court did not, however, hold that the state permit regulations in *Rinehart* conflicted with the Act.¹⁴⁸ Instead, the court held that the permit requirements were

139. *See id.* (describing court's view that history suggested there was no federal right to mine on federal land free from state's intervention).

140. *See id.* at 828-29 (explaining court's finding that Congress did not intend for the Mining Law of 1872 to stand supreme with regards to state regulations).

141. *See id.* at 828 (summarizing actions taken by Congress that affirmed court's view that Mining Law of 1872 was not immune from state regulation).

142. *See id.* at 829 (describing court's analysis of case law).

143. *Rinehart*, 377 P.3d at 829 (noting court did not find Rinehart's line of case law persuasive).

144. *See id.* at 829-30 (describing court's reasoning for finding Rinehart's case law unpersuasive).

145. 155 F.3d 1005 (8th Cir. 1998).

146. *See id.* at 1011 (noting ordinance acted as de facto ban on mining and was viewed as "clear obstacle" to Congress's purposes and objectives in Mining Law of 1872).

147. *See Rinehart*, 377 P.3d at 830 (stating court's belief that Mining Law of 1872 was indeed designed to encourage mining; however, court did not believe this encouragement was absolute).

148. *See id.* (distinguishing Supreme Court of California's holding in *Rinehart* and Eighth Circuit's holding in *Lawrence County*).

the result of a compelling state interest in the preservation of its environment, and such regulations did not substantially frustrate the purpose of the Act.¹⁴⁹ The court wrote that if Congress “viewed mining as the highest and best use of federal land,” it would have expressly said so, but instead chose to note that mining should be done in compliance with state and local laws.¹⁵⁰

V. DON’T MINED ME: CRITICAL ANALYSIS OF THE SUPREME COURT OF CALIFORNIA’S DECISION

The California Supreme Court’s discussion of *Rinehart*’s case relied heavily on legislative history and historical context of mining regulation.¹⁵¹ The many prongs of the court’s analysis all led to the conclusion that federal law does not preempt California Fish and Game Code section 5653, and that the Act did not grant a federal right to mine, immune from state police powers.¹⁵² While the court’s holding seems correct, its reluctance to truly distinguish its determination that the congressional intent of the Act was to establish property rights for miners, from the Eighth Circuit’s finding in *Lawrence County*, that the purpose of the Act was to encourage mining of valuable minerals, seems to leave the holding vulnerable to attack.¹⁵³ Additionally, the court failed to rely on cases that stand for the proposition that permit requirements are generally not viewed as an obstacle to federal environmental regulations.¹⁵⁴ Finally, the court could have considered current procedures for regulating federal lands as a strongly persuasive argument for showing that there is no federal right to mine.¹⁵⁵

The Supreme Court in *Granite Rock*, the preeminent United States judicial opinion on the Mining Law of 1872, rejected a facial

149. See *id.* (explaining court’s belief that state environmental regulations do not always directly conflict with purpose of Mining Law of 1872).

150. See *id.* (noting Congress explicitly chose not to write that mining should surpass all other state interests).

151. For a discussion of the court’s use of legislative history and historical context to analyze the present case, see *supra* notes 123-141 and accompanying text.

152. For a discussion of court’s analysis leading to conclusion that federal law does not preempt state and that there is no federal right to mine, see *supra* notes 102-104 and accompanying text.

153. For a discussion of the Supreme Court of California’s opportunity and reluctance to distinguish *Rinehart* from *Lawrence County*, see *infra* notes 165-177 and accompanying text.

154. For a discussion of precedent, which has held similar local ordinances are not preempted by federal statutes, see *infra* notes 178-184 and accompanying text.

155. See *infra* notes 185-191 and accompanying text (outlining current administrative agencies regulation of federal land).

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challenge to the California Coastal Commission's requirement of a permit before a company could engage in mining.¹⁵⁶ Responding to the appellee's claim that federal law preempted any state permit requirement, the Court wrote that in order to avoid preemption, the appellee needed to show a "possible set of permit conditions not in conflict with federal law."¹⁵⁷ The Court found that reasonable environmental regulation was sufficient to meet this standard.¹⁵⁸ The Court held that while the Property Clause gives Congress the plenary power to legislate the use of federal lands, the clause itself does not conflict with state regulation of federal lands.¹⁵⁹

The standard for preemption set forth in *Granite Rock* declares that state environmental regulations must frustrate Congress's purposes and objectives in order for federal law to preempt state law.¹⁶⁰ In *Lawrence County*, the Eighth Circuit concluded the congressional intent of the Mining Law of 1872 was "the encouragement of exploration for and mining of valuable minerals located on federal lands"¹⁶¹ The court determined the city ordinance, which acted as a de facto ban on mining, therefore, frustrated Congress's intended encouragement of mining on federal land.¹⁶² The Supreme Court of California in *Rinehart*, on the other hand, concluded that the purpose of the Mining Law of 1872 was to prevent federal obstacles to mining and provide property rights for miners.¹⁶³ The court further reasoned that the state regulations should not be preempted by the Act because the state's permit requirement and moratorium

156. Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 593 (1987) (describing court's rejection of appellee's facial challenge to state permit requirement).

157. See *id.* (outlining test for permit requirement to avoid preemption).

158. See *id.* at 589 (noting permit requirement permitted if "reasonable state environmental regulation" is not preempted).

159. See *id.* at 580-81 (citing *Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976)) (explaining Property Clause itself does not automatically conflict with all state regulation of federal land).

160. *Id.* at 581 (explaining standard for preemption). The preemption standard requires that "state law stand as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Id.* (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). Preemption will also apply when "it is impossible to comply with both state and federal law." *Id.* (citing *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963)).

161. *S.D. Mining Ass'n, Inc. v. Lawrence County*, 155 F.3d 1005, 1010 (8th Cir. 1998) (discussing Eighth Circuit's finding of congressional intent).

162. *Id.* at 1011 (describing Eighth Circuit's holding).

163. See *Rinehart*, 377 P.3d at 826-27 (discussing court's finding that Mining Law of 1872 was enacted to protect against federal interference with property rights granted by the Act).

did not, in its view, conflict with the congressional purposes of the Act.¹⁶⁴

Rinehart and *Lawrence County* are in stark conflict with one another.¹⁶⁵ The different findings on congressional intent by the Eighth Circuit and Supreme Court of California play a pivotal role in each court's decision regarding the preemptive reach of the Mining Law of 1872.¹⁶⁶ The *Rinehart* court seemed to acknowledge the existence of such conflict, writing "[w]here we part company [from the *Lawrence County* court] is with the conclusion that such general, overarching goals would be frustrated by state and local determinations that the use of particular methods, in particular areas of the country, would disserve other compelling interests."¹⁶⁷ In simply stating it "part[s] company" with the Eighth Circuit, the Supreme Court of California failed to take the opportunity to establish that its finding on the congressional intent of the Act, was the correct one.¹⁶⁸ The court in its opinion provided a thorough and convincing analysis of the text and legislative history of the Act, yet seemingly abandons its findings by saying it merely "part[s] company" with the *Lawrence County* Court, leaving its determination of the true congressional purpose of the Act vulnerable to attack.¹⁶⁹

Another area where the *Rinehart* court failed to distinguish itself from the *Lawrence County* court deals with *Rinehart's* assertion that the permit moratorium prevented him from using "the only commercially practicable method of extracting gold from his mining claim."¹⁷⁰ The "commercially practicable" language used by *Rinehart* is taken from a hypothetical scenario in *Granite Rock*, where the court contemplates "a state environmental regulation so severe that a particular land use would become commercially im-

164. See *id.* at 830-31 (finding Mining Law of 1872 requires compliance with state and local laws and that such laws do not conflict federal law).

165. *Id.* at 820 (holding California permit requirements for suction dredge mining are not preempted by Mining Law of 1872). But see *Lawrence County*, 155 F.3d at 1011 (holding ban on mining in certain areas of national park is preempted by Mining Law of 1872).

166. *Id.* at 826-27 (finding congressional intent of Mining Law of 1872 was to protect miner's property rights from interference by federal government). But see *Lawrence County*, 155 F.3d at 1011 (finding congressional intent of Mining Law of 1872 was to encourage mining of valuable mineral deposits located on federal land).

167. See *id.* at 830 (noting acknowledgment of conflict with Eighth Circuit).

168. For a further discussion of the court's approach to finding congressional intent, see *supra* notes 105-141 and accompanying text.

169. See *Rinehart*, 377 P.3d at 830 (describing conclusion that Congress intended for Mining Law of 1872 to coexist with state and local laws).

170. See *id.* at 821 (describing *Rinehart's* contention that federal law is preemptive because local laws make mining on his claim commercially impracticable).

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practicable.”¹⁷¹ The Court in *Granite Rock* used this language when discussing the difficulty in drawing a line between environmental regulation and land use planning, however, the hypothetical situation is only mentioned once and serves as dicta in the court’s opinion.¹⁷² In *Lawrence County*, the Eighth Circuit found that because the de facto ban on surface mineral mining prevented the only practicable method of mining, it should be preempted by the Mining Law of 1872.¹⁷³ The Eighth Circuit incorrectly adopted a line of dicta referring to the distinction between environmental regulation and land use planning as a factor in determining whether the federal statute should preempt local regulation.¹⁷⁴ In *Rinehart*, the appellate court explained that the question of whether the permit moratorium renders mining “commercially impracticable” as an issue of fact and remanded the question to the trial court for further proceedings.¹⁷⁵ Rather than remanding to the trial court, the Supreme Court of California should have denounced Rinehart’s defense as the incorrect standard to apply in an analysis of the preemptive ability of the Mining Law of 1872.¹⁷⁶ Not only would this be consistent with the Supreme Court in *Granite Rock*, but it would further distinguish the court’s opinion from the Eighth Circuit in *Lawrence County*.¹⁷⁷

In addition to failing to distinguish its opinion from *Lawrence County*, the California Supreme Court also missed the opportunity to use a strong line of case law to show that California’s state permit requirement is not an obstacle to the purpose of the Mining Law of 1872.¹⁷⁸ The court takes a compelling view when stating the Act

171. See *Cal. Coastal Comm’n v. Granite Rock Co.*, 480 U.S. 572, 587 (1987) (noting example to draw “line between environmental regulation and land use planning”).

172. See *id.* (noting that “commercially impracticable” language is only used as example).

173. See *S.D. Mining Ass’n, Inc. v. Lawrence County*, 155 F.3d 1005, 1011 (8th Cir. 1998) (finding that de facto ban on mining on federal lands is clear obstacle to congressional purpose of Mining Law of 1872).

174. See *Granite Rock*, 480 U.S. at 587 (noting court’s dicta in using “commercially impracticable” language).

175. See *Rinehart*, 377 P.3d at 822 (noting court of appeals remanded “commercially impracticable” defense for further proceedings based on factual issues).

176. For a discussion of why commercial practicability of mining is not the test for preemption, see *supra* notes 171-175 and accompanying text.

177. See *Granite Rock*, 480 U.S. 572 (holding permit requirement was not at conflict with Mining Law of 1872); see also *Lawrence County*, 155 F.3d 1005 (holding ban on mining in certain areas of national park was preempted by Mining Law of 1872).

178. See, e.g., *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981) (holding tax on mining was not an obstacle to congressional purpose of federal coal mining law); see also *Woodruff v. N. Bloomfield Gravel Mining Co.*, 18 F. 753

does not allow mining to be pursued at all costs.¹⁷⁹ The Supreme Court, however, has consistently held that even if the Act did have such a broad purpose, it would be insufficient to preempt all state regulations dealing with the attainment of such purpose.¹⁸⁰ In *Commonwealth Edison Co. v. Montana*, the Supreme Court found that nothing in the Act's text or legislative history suggested a tax would conflict with the purpose of the Act.¹⁸¹ The Court further wrote that "[preemption] of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained.'"¹⁸² The Act contains no statutory purpose other than its general title: "An Act to promote the Development of the mineral Resources of the United States."¹⁸³ Nothing in the Act's text or legislative history suggests persuasive reasons for preemption of state regulations.¹⁸⁴

The Court in *Granite Rock* also cited rules and regulations promulgated by the Department of Agriculture's Forest Service under the Secretary of Agriculture, which is in charge of "regulat[ing] [the] occupancy and use" of national forests.¹⁸⁵ Today, the Forest Service and Bureau of Land Management (BLM) are the primary agencies charged with managing the federal lands on which

(C.C.D. Cal. 1984) (holding Mining Law of 1872 did not forbid California from exercising police power to halt hydraulic mining).

179. For a discussion of the court's conclusion that the Mining Law of 1872 does not stand for the proposition that mining can be pursued at all costs, see *supra* notes 110-141 and accompanying text.

180. See Application of the United States for Leave to File Amicus Curiae Brief in Support of Respondent and Proposed Brief of the United States at 13, *People v. Rinehart*, 377 P.3d 818 (Cal. 2016) (No. S222620), 2015 WL 51666997 (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Development Comm'n*, 461 U.S. 190, 221 (1983)) (noting Supreme Court has routinely rejected argument that broad statement of purpose for congressional acts should preempt state regulations related to said act).

181. See *Commonwealth Edison Co.*, 453 U.S. at 632 (discussing conclusion that nothing in statute's language or legislative history suggested state tax would conflict with federal law).

182. *Id.* at 634 (quoting *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981)) (describing reluctance to apply preemption).

183. See Brief for the Respondent, *supra* note 180, at 15 (noting lack of specific purpose in Mining Law of 1872).

184. For a discussion of the lack of authority in text or history that suggests Mining Law of 1872 should preempt state regulations on mining, see *supra* notes 116-141 and accompanying text.

185. See *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 582 (1987) (citing 16 U.S.C. § 551) (describing powers vested in Secretary of Agriculture by Congress).

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mining occurs.¹⁸⁶ The Forest Service's rules expressly require compliance with state air and water quality standards.¹⁸⁷ Similarly, the BLM requires compliance with state environmental laws unless they directly conflict with federal law.¹⁸⁸ The BLM further declares that if a state regulation is not in conflict with federal law and requires a higher level of environmental protection, then that regulation should be followed.¹⁸⁹ The Supreme Court in *Granite Rock* wrote of such promulgations by agencies, stating that "[i]t is impossible to divine from these regulations, which expressly contemplate coincident compliance with state law as well as with federal law, an intention to pre-empt all state regulation of unpatented mining claims in national forests."¹⁹⁰ The Supreme Court of California had the opportunity to use these current examples of environmental regulations by administrative agencies as further examples proving the Mining Law of 1872 should not preempt California's suction dredging permit requirement and moratorium.¹⁹¹

VI. HAS THE SUPREME COURT OF CALIFORNIA STRUCK GOLD? IMPACT OF *PEOPLE V. RINEHART*

The Mining Law of 1872 is so frequently litigated, it is estimated to have led to the most judicial opinions of any statute.¹⁹² The Supreme Court of California's holding in *Rinehart* will, therefore, likely have some impact on the battle between state regulators and the mining industry; the question is how broad the scope of the impact will be.¹⁹³ At its core, the issues surrounding the Act revolve

186. See Brief for the Respondent, *supra* note 180, at 11 (noting Forest Services and BLM primarily manage lands upon which mining occurs under Mining Law of 1872).

187. See *Granite Rock*, 480 U.S. at 583 (discussing Forest Service's explicit requirement of compliance with certain state laws).

188. See Brief for the Respondent, *supra* note 180, at 12 (citing 43 C.F.R. § 3809.3) (explaining BLM's requirement of compliance with state environmental regulations).

189. See *id.* at 12-13 (discussing BLM's stance that state regulations that are not directly in conflict with federal law should be followed, even if such regulation requires higher level of environmental protection).

190. See *Granite Rock*, 480 U.S. at 584 (asserting Congress had no intention of preempting all state regulation of unpatented mining claims).

191. For a discussion of environmental regulation by administrative agencies, see *supra* notes 185-189 and accompanying text.

192. See Sahand Farahati, Field Report, *People v. Rinehart, Conflicting Jurisprudence, and Certiorari*, COLUM. J. ENVTL. L. 1, 5 (Nov. 16, 2016), http://www.columbiaenvironmentallaw.org/people_v_rinehart/ (citing John D. Leshy, *The Mining Law: A Study in Perpetual Motion* 20 (1987)) (discussing prevalence of Mining Law of 1872 in judicial opinions).

193. See Richard Frank, *Look Out Below!*, LEGAL PLANET (May 15, 2017), <http://legal-planet.org/2017/05/15/look-out-below/> (discussing potential future impli-

around the principle of federalism and a state's ability to exercise its police power in the face of federal legislation.¹⁹⁴ Further, a current split between the California Supreme Court and Eighth Circuit leaves much uncertainty on the Act's preemptive ability.¹⁹⁵ The case may be ripe for consideration by the Supreme Court due to the constant uncertainty surrounding the statute, along with a current split in the courts.¹⁹⁶

The Supreme Court of California's decision in *Rinehart* is a win for federalism.¹⁹⁷ The court's holding reassures a state's police power to regulate federal land in its territory.¹⁹⁸ The decision may also have persuasive value for many western states whose lands are predominantly held by the federal government.¹⁹⁹ The *Rinehart* decision sets precedent that environmental regulation of federal lands within a state can be decided by local governments who share a closer connection to the local people than the federal government.²⁰⁰

The *Rinehart* decision also appears to be a win for environmentalists.²⁰¹ For one, states who are deeply knowledgeable about environmental issues impacting their lands now have precedent that

cations of *Rinehart* decision in light of conflicts between state and federal governments as well as mining industry).

194. See, e.g., *Rinehart*, 377 P.3d at 820 (holding state police power is not preempted by Mining Law of 1872).

195. See *id.* (holding California permit requirements for suction dredge mining are not preempted by Mining Law of 1872). But see *S.D. Mining Ass'n, Inc. v. Lawrence County*, 155 F.3d 1005, 1011 (8th Cir. 1998) (holding ban on mining in certain areas of national park is preempted by Mining Law of 1872).

196. See Farahati, *supra* note 192, at 3 (examining likelihood of Supreme Court granting certiorari in *People v. Rinehart*).

197. See *Rinehart*, 377 P.3d at 820 (giving deference to state police power in light of potentially conflicting federal statutes).

198. See *id.* (describing holding that Mining Law of 1872 does not immunize miners from state's exercise of police power).

199. See George R. Wentz, Jr., *Americans in Western States Are Denied Equal Rights*, NAT'L REVIEW (Aug. 2, 2016, 8:00 AM), <http://www.nationalreview.com/article/438586/western-states-federal-lands-conflict-their-sovereignty> (discussing federal statutes governing much of land in twelve western states). In Utah, for example, sixty-six percent of the land is federal land regulated by the federal government. *Id.*

200. See *Rinehart*, 377 P.3d at 820 (noting court's deference to states to exercise police powers on land within their territory).

201. See Farahati, *supra* note 192 (quoting Alan Septoff, *An Unhappy Birthday for the 1872 Mining Law*, EARTH ISLAND J. (May 17, 2016), http://www.earthisland.org/journal/index.php/elist/eListRead/an_unhappy_birthday_for_the_1872_mining_law) (describing environmentalist's sentiments that Mining Law of 1872 is "a hurtful and embarrassing reminder of the worst of nineteenth-century thinking").

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will allow them to govern the lands within their borders.²⁰² Additionally, the court's finding that there is no federal right to mine, gives California, and potentially other states, almost unrestricted ability to regulate mining under the purview of the state's police power.²⁰³ Under *Rinehart*, anything "short of a [complete] ban on all [types of] mining" seems to be within a state's power to regulate their lands.²⁰⁴

The *Rinehart* ruling is also significant because it conflicts with the Eighth Circuit's holding in *Lawrence County*.²⁰⁵ The split between California's highest state court and the federal Eighth Circuit may ultimately be decided by the Supreme Court of the United States.²⁰⁶ In *Lawrence County*, the Eighth Circuit found the Mining Law of 1872 preempted a city ordinance that acted as a de facto ban on mining because it frustrated the congressional intent of the Act, which was to encourage mining on federal lands.²⁰⁷ By contrast, the Supreme Court of California concluded in *Rinehart* that the Act's purpose was to prevent federal obstacles to mining and provide property rights for miners and, therefore, permit requirements were not preempted by the Mining Law of 1872.²⁰⁸ This distinction in regard to the Act's congressional intent is key to determining whether or not the Act should preempt state and local regulations that impose environmental restrictions on mining.²⁰⁹ Whereas adopting the Eighth Circuit's decision would reinforce the Act and potentially free miners from environmental restrictions that burden

202. See Wentz, *supra* note 199 (pointing out that land in many western states is predominately governed by arbitrary powers of federal government).

203. See *Rinehart*, 377 P.3d at 825 (noting court's rejection of argument that Mining Law of 1872 provides miners with federal right to mine, immune from state police powers).

204. See Farahati, *supra* note 192 (noting *Rinehart* decision would give extreme deference to states to regulate their lands).

205. See *Rinehart*, 377 P.3d at 820 (holding California permit requirements for suction dredge mining are not preempted by Mining Law of 1872). But see S.D. Mining Ass'n, Inc. v. Lawrence County, 155 F.3d 1005, 1011 (8th Cir. 1998) (holding ban on mining in certain areas of national park is preempted by Mining Law of 1872).

206. See Farahati, *supra* note 192, at 3 (explaining that split in courts increases chance Supreme Court will grant certiorari).

207. See *Lawrence County*, 155 F.3d at 1011 (explaining court's finding that de facto ban on mining on federal lands is clear obstacle to congressional purpose of Mining Law of 1872).

208. See *Rinehart*, 377 P.3d at 826-27 (describing court's finding regarding congressional intent of Mining Law of 1872).

209. *Id.* (finding congressional intent of Mining Law of 1872 was to protect miner's property rights from interference by federal government). But see *Lawrence County*, 155 F.3d at 1011 (finding Congress intended to promote mining on federal lands through enactment of Mining Law of 1872).

their mining activities, siding with the Supreme Court of California would be a victory for both federalism and environmentalism.²¹⁰

After the California Supreme Court's decision was handed down, Brandon Rinehart petitioned the United States Supreme Court to review the case.²¹¹ In January 2018, the United States Supreme Court rejected Rinehart's petition to grant certiorari.²¹² Thus, not only will Brandon Rinehart have to deal with the consequences of his conviction, the California moratorium on suction dredging will continue for the foreseeable future, and the split in the courts regarding preemption by the Mining Law of 1872 will persist until the Supreme Court decides to provide further clarification.²¹³

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210. For a further discussion of the environmental impacts of the *Rinehart* decision, see *supra* notes 49-53 and accompanying text. For a further discussion of the federalism impacts of the *Rinehart* decision, see *supra* notes 197-200 and accompanying text.

211. See Frank, *supra* note 193 (stating Rinehart and his counsel have petitioned United States Supreme Court to review his case).

212. David Ettinger, *SCOTUS Denies Cert in Supreme Court Mining Case*, HORVITZ & LEVY LLP: AT THE LECTERN (Jan. 8, 2018, 8:55 AM), <http://www.atthelectern.com/scotus-denies-cert-in-supreme-court-mining-case/> (explaining Supreme Court rejected petition for certiorari of *People v. Rinehart* after U.S. Solicitor General recommended against review).

213. See *Rinehart*, 377 P.3d at 821-22 (describing penalties for Rinehart's violation); see *id.* at 821 (explaining current status of California suction dredging moratorium). For a discussion of the split in the courts, see *supra* notes 165-169 and accompanying text.

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