IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **BRANDON LANCE RINEHART,** Defendant and Appellant.	Case No. C074662

Plumas County Superior Court, Case No. M1200659
The Honorable Ira Kaufman, Judge

PETITION FOR REHEARING

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TABLE OF CONTENTS

Page

PETITION FOR REHEARING 1

ARGUMENT 1

I. *South Dakota Mining* Is Not Correct 2

II. The "Commercially Impracticable" Language In *Granite Rock* Does Not Apply to Appellant's Preemption Defense 8

III. Even If This Court Adopts *South Dakota Mining*, The Trial Court Ruling Can Be Affirmed Because of the Limited Nature of the Moratorium in Existence at the Time When Appellant Conducted His Activity 13

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 16

TABLE OF AUTHORITIES

Pages

CASES

Assn. of Am. Railroads v. S. Coast Air Quality Mgmt. Dist.
(9th Cir. 2010) 622 F.3d 1094 5

Bates v. Dow Agrosciences LLC
(2005) 544 U.S. 431 .... 6, 8

California Coastal Commission v. Granite Rock Co.
(1987) 480 U.S. 572 .... passim

Chae v. SLM Corp.
(9th Cir. 2010) 593 F.3d 936 5

Commonwealth Edison Co. v. Montana
(1981) 453 U.S. 609 3

County of Sutter v. Nicols
(1908) 152 Cal. 688 7

Granite Rock Co. v. Calif. Coastal Comm.
(9th Cir. 1985) 768, F.2d 1077, *reversed by Granite Rock, supra*,
480 U.S. 572 4

In re Jessup's Estate
(1889) 81 Cal. 408 1

Lacoste v. Dept. of Conservation
(1924) 263 U.S. 545 7

Lowenstein v. City of Lafayette
(2003) 103 Cal.App.4th 718 13

McDaniel v. Wells Fargo Investments, LLC
(9th Cir. 2013) 717 F.3d 668 6

Pac. Merch. Shipping Assn. v. Goldstene
(9th Cir. 2011) 639 F.3d 1154 6

TABLE OF AUTHORITIES
(continued)

Pages

Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Com.
(1983) 461 U.S. 190 3

People ex rel. *State Pub. Wks. Bd. v. Superior Court*
(1979) 91 Cal.App.3d 95 13

RCJ Med. Servs., Inc. v. Bonta
(2001) 91 Cal.App.4th 986 5

Seven Up Pete Venture v. Montana
(Mont. 2005) 114 P.3d 1009 5

South Dakota Mining Association v. Lawrence County
(8th Cir. 1998) 155 F.3d 1005 .... passim

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency
(2002) 535 U.S. 302 13

Viva! Intern. Voice for Animals v. Adidas Promotional Retail Ops., Inc.
(2007) 41 Cal.4th 929 7

Williamson County Regional Planning Comm. v. Hamilton Bank
(1985) 473 U.S. 172 13

Woodruff v. North Bloomfield Gravel Mining Co.
(C.C.D. Cal. 1884) 18 F. 753 7

Wyatt v. U.S.
(Fed. Cir. 2001) 271 F.3d 1090 13

Wyeth v. Levine
(2009) 555 U.S. 555 6

Yee v. City of Escondido
(1990) 224 Cal.App.3d 1349 2

TABLE OF AUTHORITIES
(continued)

Pages

STATUTES

United States Code, title 30
§ 22 .... passim
§ 612(b) 2

Fish and Game Code
§ 5653.1 .... passim
§ 5653.1, subd. (b) 11

Public Resources Code § 3981 7

Stats.2009, Chapter 62, § 2 .... 6, 11

Stats.2011, Chapter 133, § 6 .... 13, 14

Stats.2012, Chapter 39, § 7 13

REGULATIONS

Code of Federal Regulations, title 36
§ 228.5 3
§ 228.8 3

Code of Federal Regulations, title 43
§ 3715.5(b) 3
§ 3802.3-2 3
§ 3809.3 .... 3, 4

COURT RULES

California Rules of Court
rule 8.268 1
rule 8.268(b)(1)(A) 1
rule 8.366 1

OTHER AUTHORITIES

64 Federal Register 6422 (February 9, 1999) 5

TABLE OF AUTHORITIES
(continued)

Pages

65 Federal Register 69998 (November 21, 2000) 5

70 Federal Register 32713 (June 6, 2005) 4

PETITION FOR REHEARING

Pursuant to California Rules of Court, rules 8.268 and 8.366, respondent the People of the State of California moves the Court to rehear this appeal. The ground for this petition is that the Court's decision, dated September 23, 2014, is based upon errors of law, as explained below. This is a proper basis for rehearing. (*In re Jessup's Estate* (1889) 81 Cal. 408, 471.) This petition is timely. (Cal. Rules of Court, rule 8.268(b)(1)(A).)

The foundation for the Court's September 23, 2014 decision is its reliance on *South Dakota Mining Association v. Lawrence County* (8th Cir. 1998) 155 F.3d 1005, a case which was not extensively briefed by the parties but which the Court focused on at oral argument. This petition attempts to rectify the lack of briefing to date as to *South Dakota Mining*, and to elaborate on points sketched out at oral argument.

Respondent respectfully requests that the Court promptly provide appellant with the opportunity to respond to this petition, grant this petition for rehearing before the decision becomes final on October 23, 2014, schedule oral argument if the Court wishes, and ultimately issue a new decision affirming the trial court ruling.

ARGUMENT

Appellant was convicted of using suction dredge mining equipment without a permit and of possessing suction dredge mining equipment in a closed area. (Slip Op., pp. 2, 10.) Appellant contended below and on appeal that Fish and Game Code section 5653.1, imposing a moratorium on suction dredge mining permits, was preempted by federal law. (Slip Op., pp. 10-11.) At issue is the federal Mining Law of 1872, primarily 30 U.S.C. § 22. (Slip.pp. 12-13.) The Court found *South Dakota Mining* "nearly directly on point here," and applied it. (Slip Op., pp. 16-19.)Slip Op., pp. The Court concluded that under *South Dakota Mining* if state

laws make mining "commercially impracticable" those laws are preempted by federal law. (Slip Op., p. 19.) The Court remanded this case to the trial court to answer (1) whether the Fish and Game Code provisions prohibit the issuance of permits; and (2) if so, whether that prohibition "rendered commercially impracticable the exercise of defendant's mining rights." (Slip Op., p. 19.)

Respondent respectfully submits that the Court's decision is based on a misreading of the relevant case law and that rehearing is needed to correct the error.

I. *SOUTH DAKOTA MINING* IS NOT CORRECT

This Court fully embraced the holding of *South Dakota Mining*. That holding is, of course, not binding on this Court. (E.g., *Yee v. City of Escondido* (1990) 224 Cal.App.3d 1349, 1351.) And, respectfully, that holding is wrong or out-of-date, for multiple reasons, and should not be followed by this Court.

First, like this appeal, *South Dakota Mining* was a preemption case under the Mining Act of 1872. (155 F.3d at pp. 1006, 1009-10.) In analyzing that question, however, that court used the analysis in *California Coastal Commission v. Granite Rock Co.* (1987) 480 U.S. 572 of preemption under federal land use statutes (the National Forest Management Act (NFMA) and the Federal Land Policy and Management Act (FLPMA)). (155 F.3d at pp. 1010-11 [citing to *Granite Rock*, *supra*, 480 U.S. at pp. 586-89].) But, at the same time, *South Dakota Mining* completely ignored *Granite Rock*'s separate analysis of the Mining Act of 1872, which is found at 480 U.S. at pages 582 to 584. In *Granite Rock*, the Supreme Court said simply that the Mining Act of 1872 did not express any legislative intent as to environmental regulation. (480 U.S. at p. 582.) While the Supreme Court mentioned the 1955 enactment of 30 U.S.C. § 612(b), it did not analyze that provision or any other statutory provision.

(480 U.S. at p. 582) Instead, it looked directly at the federal regulations promulgated to implement that provision: "If . . . it is the federal intent that [miners] conduct [their] mining unhindered by any state environmental regulation, one would expect to find the expression of this intent in these Forest Service regulations." (*Ibid.*) In fact, the Supreme Court stated that it would expect that expression to be stated "with some specificity." (*Id.*, at p. 583.) The Supreme Court went on to conclude that "[u]pon examination, however, the Forest Service regulations . . . not only are devoid of any expression of intent to pre-empt state law, but rather appear to assume that those submitting plans of operations [to mine on federal land] will comply with state laws." (*Ibid.*) Those federal regulations are still in place. (See 36 C.F.R. §§ 228.5, 228.8 [quoted in *Granite Rock*, *supra*, 480 U.S. at p. 583-84]; see also 43 C.F.R. §§ 3715.5(b), 3802.3-2, 3809.3 [also requiring compliance with state laws].) Thus, *Granite Rock* had already ruled that there is no preemption of state environmental laws under the Mining Act of 1872, a point *South Dakota Mining* ignored.

Second, *South Dakota Mining*'s basis for finding preemption was that Congress's purpose was to encourage mining and a state law that prohibits mining frustrates that purpose. (155 F.3d at p. 1011 [finding the local ordinance to be an obstacle to the congressional objectives of "encourag[ing] exploration and mining of valuable mineral deposits located on federal land and has grant[ing] certain rights to those who discover such minerals"].) But that ignores Supreme Court precedent that a congressional purpose to encourage an activity, by itself, does not preempt state law. (*Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Com.* (1983) 461 U.S. 190, 221-23; *Commonwealth Edison Co. v. Montana* (1981) 453 U.S. 609, 633-34.) It bears remembering that the Ninth Circuit's basis for finding preemption in the *Granite Rock* case was that a state permit requirement would undermine the federal permit

requirement under federal mining laws because the state could come to a different judgment as to environmental requirements. (*Granite Rock Co. v. Calif. Coastal Comm.* (9th Cir. 1985) 768, F.2d 1077, 1081-83, *reversed by Granite Rock, supra*, 480 U.S. 572.) In fact, one of the Supreme Court's dissenting opinions explicitly argues that point:

> [T]he Court's opinion today approves a system of twofold authority with respect to environmental matters. The result of this holding is that state regulators, whose views on environmental and mineral policy may conflict with the views of the Forest Service, have the power, with respect to federal lands, to forbid activity expressly authorized by the Forest Service.

(*Granite Rock, supra*, 480 U.S. at p. 606 (Powell, J., dissenting.) But that is a *dissent*. The majority of the Justices on the Supreme Court disagreed. The Supreme Court reversed the Ninth Circuit's holding and ruled that there was no preemption under the federal mining laws. (*Id.*, at pp. 582-84.) Thus, *South Dakota Mining* is contrary to Supreme Court precedent, and this Court should not adopt its mistaken reasoning.

Third, after *South Dakota Mining* was decided in 1998, the federal agencies that implement the federal mining laws stated their views on preemption. The U.S. Forest Service has stated that while "[s]tate regulation of suction dredge mining operations . . . is pre-empted when it conflicts with Federal law," it is also true that "both the Forest Service and a State can permissibly regulate suction dredge mining operations for locatable minerals occurring on [Forest Service] lands." (70 Fed.Reg. 32713, 32722 (June 6, 2005).) Consistently, but more formally, the U.S. Bureau of Land Management ("BLM") has promulgated a regulation, 43 C.F.R. § 3809.3: "If State laws or regulations conflict with this subpart regarding operations on public lands, you must follow the requirements of this subpart. However, there is no conflict if the State law or regulation requires a higher standard of protection for public lands than this subpart."

In issuing this rule, BLM explicitly discussed the issue of preemption. (See 65 Fed.Reg. 69998, 70008-09 (Nov. 21, 2000).) BLM did this because of *Granite Rock*'s suggestion that agencies address preemption in their regulations. (64 Fed.Reg. 6422, 6427 (Feb. 9, 1999) [proposed rule].) BLM explained that "no conflict exists if the State regulation requires a higher level of environmental protection" and that "States may apply their laws to operations on public lands." (65 Fed.Reg., at p. 70008.) BLM further explained that "the State law or regulation is preempted only to the extent that it specifically conflicts with Federal law" and that such "[a] conflict occurs *only* when it is impossible to comply with both Federal and State law at the same time." (*Id.*, at pp. 70008-09, emphasis added.) This has been BLM's view for more than thirty years. (See 64 Fed.Reg., at p. 6427, quoting preamble to 1980 regulations.) In addressing preemption, BLM made special note of a Montana initiative statute prohibiting cyanide leaching-based operations. (65 Fed.Reg., at p. 70009.) Similar to what occurred here, that Montana statute banned one form of mining, which miners had argued was the only economical way to mine. (See *Seven Up Pete Venture v. Montana* (Mont. 2005) 114 P.3d 1009, 1014, 1016.) BLM found this Montana statute to "provide a higher standard of protection," and that there was no preemption: "In this situation, the State law or regulation will operate on public lands. BLM believes that this is consistent with FLPMA, the mining laws, and the decision in the Granite Rock case." (65 Fed.Reg. at p. 70009.) Thus, it is BLM's interpretation of federal law that it does not matter if a state law prohibits one form of mining. This Court "must defer" to this federal agency interpretation of federal law preemption. (*RCJ Med. Servs., Inc. v. Bonta* (2001) 91 Cal.App.4th 986, 1005-11; see also *Assn. of Am. Railroads v. S. Coast Air Quality Mgmt. Dist.* (9th Cir. 2010) 622 F.3d 1094, 1097 [applying rule of deference to preemption

question]; *Chae v. SLM Corp.* (9th Cir. 2010) 593 F.3d 936, 949-50 [same].)

Lastly, *South Dakota Mining* ignored the importance of the "presumption against preemption." The court did not mention that presumption at all. (155 F.3d 1005.) But the Supreme Court has held that "in all pre-emption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied, [courts] start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the *clear and manifest* purpose of Congress." (*Wyeth v. Levine* (2009) 555 U.S. 555, 565, emphasis added and internal quotation marks, ellipses, and citations omitted.) This high standard is imposed due to "respect for the states as independent sovereigns in our federal system." (*Id.*, at p. 565 n.3.) Thus, more recently and after *South Dakota Mining*, the Supreme Court has explained that if two readings of a statute are plausible, courts "have a duty to accept the reading that disfavors pre-emption." (*Bates v. Dow Agrosciences LLC* (2005) 544 U.S. 431, 449.)

Appellant argued (on reply) that the presumption against preemption does not apply here because his activity is mining under federal law. But that asks the wrong question. As the Supreme Court explained in 2009, the issue is the "historic presence of state law," not "the absence of federal regulation." (*Wyeth*, *supra*, 555 U.S. at p. 565 n.3.) Thus, courts have more recently held that the presumption applied when California labor law affected securities operations and when California air quality regulations affected maritime commerce. (*McDaniel v. Wells Fargo Investments, LLC* (9th Cir. 2013) 717 F.3d 668, 675; *Pac. Merch. Shipping Assn. v. Goldstene* (9th Cir. 2011) 639 F.3d 1154, 1166-67.) Here, the purpose of Fish and Game Code section 5653.1 is environmental protection: "The Legislature finds that suction or vacuum dredge mining results in various adverse

environmental impacts to protected fish species, the water quality of this state, and the health of the people of this state." (Stats. 2009, ch. 62, § 2.) "Protection of the wildlife of the State is peculiarly within the police power . . . ." (*Lacoste v. Dept. of Conservation* (1924) 263 U.S. 545, 551; see also *Viva! Intern. Voice for Animals v. Adidas Promotional Retail Ops.*, Inc. (2007) 41 Cal.4th 929, 937, fn. 4 [collecting cases].) Moreover, California has a long tradition of protecting the environment from the adverse effects of mining. (See, e.g., *Woodruff v. North Bloomfield Gravel Mining Co.* (C.C.D. Cal. 1884) 18 F. 753 [upholding injunction under California law against hydraulic mining on federal land due to its environmental effects]; *County of Sutter v. Nicols* (1908) 152 Cal. 688 [same]; Pub. Resources Code, § 3981 [originally enacted by Stats. 1893, ch. 223, p. 337 § 1, regulating hydraulic mining].) Thus, the presumption applies here and should have been applied by the Eighth Circuit in *South Dakota Mining*.

These presumption against preemption principles are important in analyzing the statute at issue here. The Court correctly focused on 30 U.S.C. § 22, which is quoted at page 12 of the Court's decision. There are multiple ambiguities in that statutory provision:

- The statute says that "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase." Does it mean that there should be no obstacles of any kind to mining, as appellant argues? Or does it mean that the land (or minerals) shall be "free" and miners do not need to pay the federal government for them, as cases and the legislative history indicate (see Respondent's Brief, filed Nov. 21, 2013, pp. 10-12)?

- The statute says that that exploration and purchase shall be "under regulations prescribed by law." The provision later on, in another context, refers more specifically to "laws of the United States." Does the reference to "regulations prescribed by law" mean miners are subject to just federal regulations? Or does that mean miners are subject to both federal and state regulations?
- The statute also says that exploration and purchase shall be "according to the local customs and rules of miners in the several mining districts." Does that mean just the ad hoc associations formed privately by miners? Or does it indicate an intent by Congress to preserve local regulations adopted under state law (by local associations, local governments, or states themselves)?

The Supreme Court said in 2009 that, because of the presumption against preemption, the courts have a *duty* to resolve all ambiguities on questions of preemption in favor of the validity of state law. (*Bates*, *supra*, 544 U.S. at p. 449.) Because of that, all of those ambiguities in 30 U.S.C. § 22 should be resolved against preemption of any state law, including Fish and Game Code section 5653.1.

The only tenable interpretation of the federal mining laws, taking into account *Granite Rock*, the BLM's interpretation, and the presumption of preemption, is that there is no preemption here.

II. THE "COMMERCIALLY IMPRACTICABLE" LANGUAGE IN *GRANITE ROCK* DOES NOT APPLY TO APPELLANT'S PREEMPTION DEFENSE

After adopting *South Dakota Mining*, the Court held that the question of preemption in this case hinges on whether an activity is "commercially impracticable." (Slip Op., p. 19.) *South Dakota Mining* did not use this

"commercially impracticable" language, but rather the parties in *South Dakota Mining* stipulated on summary judgment that surface mining was the only way to mine in the area where the ordinance applied (and then on appeal the defendants switched positions on the issue). (155 F.3d at pp. 1007-08 & n.3.) This "commercially impracticable" phrase comes from *Granite Rock*, but its use here is based on a misunderstanding of *Granite Rock*.

Granite Rock examined preemption under three sets of laws: (1) federal mining laws; (2) two federal land use statutes, NFMA and FLPMA; and (3) the Coastal Zone Management Act (CZMA). (480 U.S. 572.) As to federal mining laws, the Supreme Court found no intent to preempt state laws, either in the statutes or in the federal regulations implementing those statutes. (*Id.* at pp. 582-84.) As to NFMA and FLPMA, the Supreme Court *assumed* that that those federal statutes would preempt state land use statutes, but found that the challenged state requirement to get a permit for an activity did not amount to a land use statute. (*Id.* at pp. 584-89.) As to CZMA, the Supreme Court found that Congress did not intend to diminish state regulatory authority. (*Id.* at pp. 589-93.)

This Court's decision fails to appreciate that the "commercially impracticable" language is limited to *Granite Rock*'s discussion of preemption under NFMA and FLPMA. (480 U.S. at p. 587.) That phrase was used in explaining that *hypothetically* an environmental regulation could appear to be more like a land use regulation, and thus might be preempted by federal land use statutes. (*Id.*) But it had *nothing* to do with the discussion of preemption under the federal mining laws, such as the Mining Act of 1872 which is at issue here. (*Id.* at pp. 582-84; Slip Op., p. 12.) *Appellant's briefs here – or below – did not rely on the federal land use statutes, NFMA and FLPMA, at all.* That is why this Court stated that the federal law at issue here is the Mining Act of 1872. (Slip Op., p. 12.)

Because NFMA and FLPMA are not at issue here, the "commercially impracticable" standard does not apply here either.

Moreover, in fact, the *Granite Rock* court did not actually rule that NFMA and/or FLPMA preempt state laws that make mining commercially impracticable. Instead, it *assumed* – for the sake of argument, and *without* deciding the issue – that those federal land use statutes preempt state land use regulation. (480 U.S. at p. 585.) And then it ruled that the state law at issue did *not* amount to a land use regulation. (480 U.S. at pp. 585-89.) Thus, there was no preemption. (*Ibid.*) The Supreme Court did not determine that NFMA or FLPMA preempt anything, or whether any particular state environmental regulation would amount to a land use regulation. The Supreme Court's discussion that "one may hypothesize" circumstances that would make mining commercially impracticable is dicta, having nothing to do with the decision the Supreme Court actually made. In short, contrary to this Court's reading of *Granite Rock*, the Supreme Court simply did not rule that either NFMA or FLPMA preempt state laws that make mining commercially impractical.

That this Court should not base its decision on this "commercially impracticable" language is made apparent if one examines the surrounding discussion in *Granite Rock*. The statement about "commercially impracticable" was made in the context of the Supreme Court distinguishing between environmental regulation and land use regulation, in deciding whether the federal land use statutes might preempt the state law. (*Granite Rock*, *supra*, 480 U.S. at pp. 586-89.) This phrase was used in explaining that *hypothetically* an environmental regulation could appear to be more like a land use regulation. (*Id.*, at p. 587.) Immediately after using this language, however, the Supreme Court explained that environmental regulation and land use regulation are "undoubtedly different": "Land use planning in essence chooses particular uses for the land; environmental

regulation, at its core, does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." (*Ibid.*) Under this standard actually enunciated by the Supreme Court, Fish and Game Code section 5653.1 is undoubtedly an environmental regulation. It was adopted by the Legislature as such:

> The Legislature finds that suction or vacuum dredge mining results in various *adverse environmental impacts* to protected fish species, the water quality of this state, and the health of the people of this state, and, *in order to protect the environment and the people of California* pending the completion of a court-ordered environmental review by the Department of Fish and Game and the operation of new regulations, as necessary, it is necessary that this act take effect immediately.

(Stats.2009, ch. 62, § 2, emphasis added.) It is not surprising that the Legislature would find that using a vacuum (of four to eight inches in diameter, or more) in the bottom of a stream might cause environmental harm. In limited fashion, this moratorium on permits lasts only until an environmental review is completed, new regulations "fully mitigate all identified significant environmental effects," and the program is fully funded by permit fees. (Fish & G. Code, § 5653.1, subd. (b).) These are measures to limit environmental harm. Just like the Legislature could enact an environmental regulation that prohibits the use of dynamite, or poisons in surface water bodies, it can act to require that if a miner uses a vacuum to mine in a stream he must mitigate all of the significant environmental effects. This is a regulation of the circumstances under which a miner may use a particular type of equipment. Thus, this Fish and Game provision is not a land use regulation, and is not preempted by NFMA or FLPMA, regardless of its effect on commercial practicability.

As discussed at oral argument, it also would not make any practical sense to apply this "commercially impracticable" standard with respect to mining claims. It is axiomatic that any person's commercial success depends on their costs and revenues. With mining, that means success depends on the labor and equipment costs on one hand and the value of gold recovered on the other hand. It is common sense that this is highly dependent on the location of the mining claim and the skill of the miner. It also, of course, depends on the price of gold, which has ranged from less than $300 per ounce to over $1,800 per ounce over the last thirty years. (See http://research.stlouisfed.org/fredgraph.png?g=qni [U.S. Federal Reserve information, subject to judicial notice].) One can imagine, then, that there is a continuum of commercial practicability for mining claims. This means that different levels of stringency of environmental regulation would make a particular mining claim commercially impracticable, and those might vary greatly over time depending on the fluctuations in the price of gold. This would place all kinds of state regulation at risk for preemption, including water quality, air quality, fuel, noise, health and safety, and tax laws (all of which apply to mining claims at some level). Adopting this "commercially impracticability" standard would require every mining claim to be adjudicated in an ad hoc fashion, and perhaps differently over time, and would require courts to decide which regulation tipped the scales to preemption. Ironically, it would mean that the least viable mining claims would be subject to the least amount of regulation by states and local communities. Taken to its logical extreme, use of this "commercially impracticable" standard could result in preemption of well-accepted state environmental regulation of mining, such as state law prohibitions on hydraulic mining or use of dynamite, where the state regulations are applied in locations where it would be much more expensive to obtain the methods by other methods.

Thus, there is no legal support for the Court's conclusion that there may be preemption if appellant can demonstrate that the state environmental regulation at issue made his mining activity "commercially impracticable."

III. EVEN IF THIS COURT ADOPTS *SOUTH DAKOTA MINING*, THE TRIAL COURT RULING CAN BE AFFIRMED BECAUSE OF THE LIMITED NATURE OF THE MORATORIUM IN EXISTENCE AT THE TIME APPELLANT CONDUCTED HIS ACTIVITY

In its decision, the Court noted that "requiring a permit from the state before persons may conduct suction dredge mining operations does not, standing alone, contravene federal law." (Slip Op., p. 16.) The Supreme Court has noted that a moratorium is a "widely used" and "essential" development tool, where an agency investigates an issue in general and places permit processes on hold. (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 337-38.) A moratorium is simply a delay in the permitting process. (*Id.*, at p. 337 n.31 [explaining that there is no "persuasive explanation for why moratoria should be treated differently from ordinary permit delays"].) These kinds of delays cannot, for example, rise to the level of a temporary taking under California law. (*Lowenstein v. City of Lafayette* (2003) 103 Cal.App.4th 718, 733-37; *People* ex rel. *State Pub. Wks. Bd. v. Superior Court* (1979) 91 Cal.App.3d 95, 108-09.) Even under federal takings law, delays of several years are permissible. (See, e.g., *Tahoe-Sierra*, *supra*, 535 U.S. at p. 337 n.32 [noting various cases]; *Williamson County Regional Planning Comm. v. Hamilton Bank* (1985) 473 U.S. 172 [finding no temporary taking despite eight year delay]; *Wyatt v. U.S.* (Fed. Cir. 2001) 271 F.3d 1090 [same for seven year delay].)

Here, there have been three different versions, to date, of Fish and Game Code section 5653.1. It was the version enacted in 2011 that was in effect when appellant conducted the activity for which he was convicted.

(See Stats.2011, ch. 133, § 6 [effective July 26, 2011]; Stats.2012, ch. 39, § 7 [effective June 27, 2012]; Slip Op., p. 2 [appellant's conduct occurred on June 16, 2012].) That 2011 version had an absolute end date for the moratorium: June 30, 2016. (Stats.2011, ch. 133, § 6 [". . . the use of any vacuum or suction dredge equipment in any river, stream, or lake of this state is prohibited until June 30, 2016, or until the director certifies to the Secretary of State that all of the following have occurred, whichever is earlier . . ."].) The current version of the moratorium found in Fish and Game Code section 5653.1, which in theory might extend past that date, is irrelevant. Just as appellant could not have been convicted of violating a statute enacted after his conduct occurred, he cannot challenge a statute not in effect when his conduct occurred.

Thus, assuming *South Dakota Mining* applies here, the question is whether a moratorium on permits which would have expired in 2016 was a "de facto ban." Respondent submits that that question answers itself: just like the permit process, a moratorium is not a ban. It is just a delay. Appellant could have mined his claim after the moratorium ended. This is a question the Court can decide on its own without remanding to the trial court.

If the Court wishes to remand the question to the trial court, consistent with the first question posed in its decision – "Does section 5653.1, as currently applied, operate as a practical matter to prohibit the issuance of permits required by section 5653"? (Slip Op., p. 19) – Respondent respectfully suggests the question should be modified to read, "Did section 5653.1, as applied to appellant, operate as a practical matter to prohibit his use of his federal mining claim?" This suggested modification would acknowledge the changes over time to Fish and Game Code section 5653.1. Without this suggested modification, the trial court will be analyzing the wrong statutory provision.

CONCLUSION

For all of the foregoing reasons, respondent respectfully requests that the Court grant rehearing.

Dated: October 6, 2014

Respectfully submitted,

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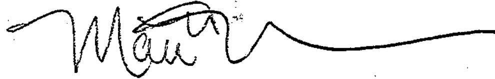
Supervising Deputy Attorney General



MARC N. MELNICK
Deputy Attorney General
Attorneys for Plaintiff and Respondent

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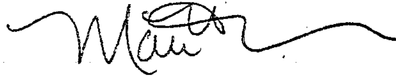
CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REHEARING uses a 13 point Times New Roman font and contains 4,438 words.

Dated: October 6, 2014

KAMALA D. HARRIS
Attorney General of California



MARC N. MELNICK
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Rinehart**

No.: **C074662**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550.

On October 6, 2014, I served the attached **Petition for Rehearing** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Clerk, Plumas County Superior Court
Main Courthouse
520 Main St., Room #404
Quincy, CA 95971

Matthew K. Carr
Plumas County District Attorney's Office
520 Main Street, Room 404
Quincy, CA 95971

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3425 S.E. Yamhill, Suite 100
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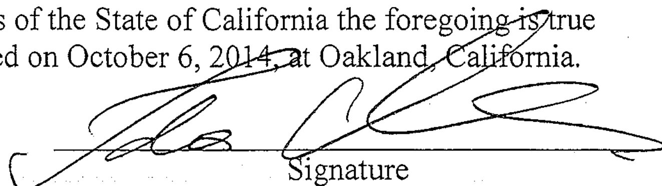
Lynne R. Saxton
Saxton & Associates
912 Cole Street, Suite 140
San Francisco, CA 94117
Counsel for Amici Curiae

Jonathan Evans
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Counsel for Amici Curiae

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 6, 2014, at Oakland, California.

Ida Martinac
Declarant



Signature