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Selected Developments in California Law

California Coastal Commission v. Granite Rock: The Battle of Big Sur

Over twenty million acres of National Forest Land exists within the boundaries of California.¹ Historically, pursuant to Article IV of the U.S. Constitution,² Congress exercised primarily a proprietary right over the National Forest System, subject to limitation by state law.³ With the ruling in *Kleppe v. New Mexico*,⁴ the Supreme Court decided that Congress may exercise both a proprietary and legislative right over the public domain.⁵ Following the decision of the Court

1. U.S. Dep't of Commerce, *Statistical Abstracts of the U.S.*, Table 1172 (1987).

2. U.S. CONST. ART. IV, § 3, cl. 2. Congress has the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. *Id.*

3. Engdahl, *State and Federal Power Over Federal Property*, 18 ARIZ. L. REV. 283, 329 (1976). With the exception of the creation of private rights in federal lands, the protection of public lands, and the application of the necessary and proper clause or the inter-governmental immunities doctrine, the federal power under Article IV Property Clause was subordinate to state legislation. *Id.* But see Wilkinson, *The Public Trust Doctrine in Public Land Law*, 14 U.C. DAVIS L. REV. 269, 306 (1980) (advocating the use of the public trust doctrine in public land law development). Wilkinson indicates that *Kleppe v. New Mexico*, 426 U.S. 539 (1976), is consistent with earlier cases, citing *Light v. United States*, 220 U.S. 523 (1911) and *Camfield v. United States*, 167 U.S. 518 (1897), similar to the development of federal law under the Commerce Clause, and cited with approval by the Court in *Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 393 (1978); Percival, *State and Local Control of Energy Development on Federal Lands*, 32 STAN. L. REV. 373, 375 (1980) (examining the extent to which state and local governments can control energy development on federal lands and escape preemption by limiting regulations to environmental controls).

4. 426 U.S. 529 (1976) (upholding the constitutionality of the Wild Free-Roaming Horses and Burros Act under the Property Clause to prohibit the removal of wild burros from federal land).

5. *Kleppe*, at 543. See Percival, *supra* note 3, at 382.

in *Kleppe*, a split of authority developed in the courts surrounding state regulation of mining by private parties on federal land.⁶ In *California Coastal Commission v. Granite Rock*,⁷ the California Coastal Commission, pursuant to section 30600(a) of the California Coastal Act, required Granite Rock to obtain a coastal development permit to continue mining within the San Padres National Forest.⁸ Granite Rock argued that application of section 30600(a) violated the Supremacy Clause of the U.S. Constitution.⁹ The Supreme Court held that states may regulate mining by private parties in the National Forest System provided state regulations are imposed for environmental purposes.¹⁰ Accordingly, the Supreme Court held that Granite Rock must apply for a permit from the California Coastal Commission in order to continue mining within the San Padres National Forest.¹¹

Part I of this Note discusses the legal background of the applicable federal and state regulations and prior judicial decisions regarding state permit requirements. Part II will summarize the facts of the *Granite Rock* case and review the decision of the U.S. Supreme Court. Part III will discuss the possible legal ramifications of *Granite Rock*.

I. LEGAL BACKGROUND

A. Supremacy Clause and the Doctrine of Preemption

Article IV, section three of the United States Constitution vests in Congress the power to enforce and enact rules necessary to regulate property belonging to the public domain.¹² Laws enacted by Congress regulating the public lands may preempt state regulation of private

6. See *infra* notes 72-99 and accompanying text.

7. 107 S.Ct. 1419 (1987).

8. *Granite Rock*, 107 S.Ct. at 1423; CAL. PUB. RES. CODE § 30600(a) (1987).

9. *Granite Rock*, 107 S.Ct. at 1423; U.S. CONST. art VI, cl. 2 (mandating that the Constitution, Laws of the United States, and all Treaties made, or which shall be made, under the Authority of the United States, are the Supreme Law of the Land).

10. *Granite Rock*, 107 S.Ct. at 1429.

11. *Id.* at 1431-32.

12. U.S. CONST. art. IV, § 3, cl. 2; *Kleppe v. New Mexico*, 426 U.S. at 540-41 (noting the power of Congress over public lands is complete and unlimited, but states retain jurisdiction over federal lands, enforcing criminal and civil laws on those lands); cf. Engdahl, *supra* note 3.

activity within the public domain in three ways.¹³ First, Congress may preempt state law by expressly stating the intention to occupy the entire field, thus displacing state regulations completely.¹⁴ Second, the intent of Congress to preempt state law may be inferred from a comprehensive scheme of federal regulation or a dominant federal interest.¹⁵ Third, in areas where Congressional intent to occupy the entire field is not expressed, federal law preempts state law to the extent the two conflict.¹⁶ State law conflicts with federal law when compliance with both federal and state regulations is impossible or the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.¹⁷ Federal mining, forest, and coastal regulations governing federal land do not expressly forbid California from regulating private mining operations within the Los Padres National Forest.¹⁸ Therefore, California may

13. U.S. Const. art. VI, cl. 2; See generally G. Finnell, Jr., *Intergovernmental Relationships in Coastal Land Management*, 25 NAT. RES. J. 31, 39-49 (1985) (discussing tension among federal, state, and local governments over coastal zone management); Comment, *Challenges to the Constitutionality of the California Divestment Statute*, 19 PAC. L. J. 217, 222-29 (1987) (advocating California Assembly Bill 134 is preempted by the federal Anti-Apartheid Act); Herman, *The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court*, 9 INDUS. REL. L. J. 623, 625, 633 (1987) (discussing the impact of the favorable decisions of the Burger Court to concurrent state-federal regulation on the preemption doctrine).

14. California Fed. Savings & Loan Ass'n v. Guerra, 107 S.Ct. 683, 689 (1987) (holding Title VII does not preempt the California Fair Employment and Housing Act section 12945(b)(2) which requires employers to provide leave and reinstatement to employees disabled by pregnancy); Jones v. Rath Packing Co., 430 U.S. 510, 525 (1977) (holding section 408 of the Federal Meat Inspection Act expressly preempted California statute regulating meat packaging and marking requirements).

15. Guerra, 107 S.Ct. at 689; Rice v. Sante Fe Elevator Corp., 331 U.S. 218, 230 (1947) (establishing pervasive regulation, dominant federal interest and unhampered operation as factors for determining the intent of Congress to preempt state regulation). See Herman, *supra* note 13.

16. Guerra, 107 S.Ct. at 689; Hillsborough County v. Automotive Medical Labs., 471 U.S. 707, 721 (1985) (upholding county ordinance despite comprehensive federal regulations in the field of blood collection and distribution); Gibbons v. Ogden, 22 U.S. 1, 15 (1824) (holding state law invalid if it interferes with, or is contrary to, federal law).

17. Guerra, 107 S.Ct. at 689; Hillsborough County, 471 U.S. at 721; Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963) (California statute that applied a different maturity test for avocados from federal regulations not preempted by federal regulations since both statutes could be enforced without impairing the federal superintendence of the field); Hines v. Davidowitz, 312 U.S. 52, 67 (1941) (state statute, which required aliens to register and carry identification cards, preempted since statute stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in providing for uniform naturalization and immigration laws). See Finnell, *supra* note 13, at 39. The Finnell article suggests that *Florida Lime & Avocado Growers Inc.* will resolve most coastal land management preemption questions. State legislation affecting land use, because it occurs in a field traditionally subject to state and local control, should be subjected to a presumption against federal preemption. Federal legislation should only preempt state legislation if the two conflict. *Id.*

18. *Granite Rock*, 107 S.Ct. at 1426, 1430-31.

regulate private mining operations unless the federal regulatory scheme implicitly preempts such regulation or California and federal regulations directly conflict.

B. Federal Statutory Law

1. Mining Regulations

To encourage the development of mineral resources in the public domain, Congress enacted the Mining Act of 1872.¹⁹ The Mining Act grants citizens the right to explore federal lands for mineral deposits.²⁰ Under the Mining Act, once an individual locates a deposit and complies with state recording laws, the mining claimant obtains the exclusive right to possess the land.²¹ The mining claimant may receive title to land from the federal government by patenting the claim.²² An unpatented mining claim, however, remains a fully recognized possessory interest.²³

In 1955, Congress passed the Surface Resource Act²⁴ to prevent abuses, under the Mining Act of 1872, by claimants who locate mining claims on public lands for purposes other than legitimate mining activity.²⁵ Prior to the issuance of a patent, the unpatented

19. 30 U.S.C.A. § 21 (West 1979 & Supp. 1987).

20. H.R. REP. NO. 5891, 84th Cong., 1st Sess., reprinted in (1955) U.S. CODE CONG. & ADMIN. NEWS 2474, 2476. See generally, *United States v. Locke*, 471 U.S. 84 (1985) (interpreting section 314 of the Federal Land and Policy Management Act as requiring mandatory compliance with recording regulations); *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 335-37 (1963) (upholding right of United States to institute administrative proceedings to determine the validity of mining claims); *United States v. Curtis-Nevada Mines, Inc.*, 611 F.2d 1277, 1281 (9th Cir. 1980) (public access upon unpatented mining claim upheld, absent evidence of material interference with mining claim); *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979) (right of Secretary of Agriculture to regulate mining within the National Forest System under the Surface Resource act of 1955 upheld); *Brubaker v. Board of County Commissioners*, 652 P.2d 1050, 1056 (Colo. 1982); *Andrus v. Click*, 554 P.2d 969, 973 (Idaho 1976).

21. 30 U.S.C.A. §§ 26, 611 (West 1979 & Supp. 1987). See H.R. REP. NO. 5891, *supra* note 20, at 2476. A location is made by staking the corners of the claim, posting a notice of location, and complying with the state laws regarding the recording of the location in the county recorder's office. *Id.* See also *Curtis-Nevada Mines*, 611 F.2d at 1281 (recognizing that a valid discovery requires a showing that the mineral can be extracted, removed and marketed at a profit and the exclusive possession and use of the mining claim is incident to prospecting and mining).

22. 30 U.S.C.A. § 29 (West 1979 & Supp. 1987).

23. *Locke*, 471 U.S. at 70-71.

24. 30 U.S.C.A. § 601 (West 1979 & Supp. 1987).

25. H.R. REP. NO. 5891, *supra* note 20, at 2474-79.

claim can only be used for prospecting, mining, or processing operations and reasonably related activities.²⁶ Additionally, Congress retains the right to manage and dispose of the surface resources.²⁷

To consolidate and modernize public land laws, Congress enacted the Federal Land Policy Management Act of 1976 (FLPMA).²⁸ The FLPMA authorizes the Secretary of the Interior to establish comprehensive rules and regulations with respect to the management, use, and protection of public lands.²⁹ FLPMA affects state and local pollution control regulations and land use requirements by mandating incorporation of non-federal pollution control laws and consideration of land use planning and management programs of State and local governments when the Secretary of the Interior develops and revises federal land use plans.³⁰ Therefore, while the Mining Act of 1872 and the Surface Resource Act of 1955 do not express an intent to preempt state regulations governing private activity on federal land, FLPMA requires mandatory compliance with state and local pollution standards but allows discretionary compliance with state and local land use plans.³¹

26. 30 U.S.C.A. § 612(a) (West 1979 & Supp. 1987).

27. *Id.* § 612(b). The United States retains the right to manage and dispose of the surface resources prior to issuance of a patent. *Id.* See *Id.* § 601. The Surface Resource Act divides the jurisdiction of the public lands between the Secretary of Interior and Secretary of Agriculture, giving the latter jurisdiction over the surface resources of public lands within the National Forest System. *Id.* See also 43 C.F.R. § 3809.0-5(c) (1987) (excludes the National Forest System from regulations issued by the Bureau of Land Management over surface resources located within the public domain); 36 C.F.R. § 228.1 (1987) (Forest Service regulations protect surface resources within the National Forest System from adverse environmental impact from mining). Haggard, *Regulation of Mining Law Activities on Federal Lands*, 21 ROCKY MTN. L. INST. 349, 363 (discusses general regulations governing mining exploration under the Mining Law of 1872); Freyfogle, *Federal Lands and Local Communities*, 27 ARIZ. L. REV. 653, 656 (1985) (examines the role of federal, state, and local governments in land use planning advocating federal interests yielding to state and local interests unless the state and local interests conflict with fundamental federal purposes). Although Congress delegated to the Secretary of Agriculture the authority to manage and dispose of the surface resources within the National Forest System, the Secretary of the Interior, through the Bureau of Land Management (BLM), retains the authority to manage the mineral resources found in the National Forest. *Granite Rock*, 107 S.Ct. at 1427. With regard to hard rock minerals, BLM determines whether the land is subject to location under the mining laws and whether the mining claimant properly located and recorded the mine, performed the assessment work, and complied with the patent requirement. *Id.* at 1434 (Powell, J., dissenting).

28. 43 U.S.C.A. §§ 1701-84 (West 1979 & Supp. 1987).

29. H.R. REP. NO. 1277, 94th Cong., 2d Sess., reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 6175, 6176. See Percival, *supra* note 3, at 382. See also 63A AM. JUR. 2D *Public Lands* §§ 13, 42 (Supp. 1987).

30. 43 U.S.C.A. §§ 1712 (c)(8), 1712 (c)(9) (West Supp. 1987). See Percival, *supra* note 3, at 382.

31. H.R. CONF. REP. NO. 1724, 94th Cong., 2d Sess., reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 6228, 6229. See Percival, *supra* note 3, at 382.

2. Forest Regulations

In 1974, the United States Forest Service passed regulations governing unpatented mining claims in the National Forest System.³² During the same year, Congress adopted the Forest and Rangeland Renewable Resources Planning Act (RPA).³³ Congress amended the RPA with the passage of the National Forest Management Act (NFMA) in 1976.³⁴

The Forest Service regulations were enacted to protect the surface resources of the National Forest System from adverse environmental impact caused by prospecting and mining on unpatented mining claims.³⁵ The Forest Service regulations require compliance with federal and state environmental standards, including air, water, and waste disposal standards.³⁶ The regulations provide a plan approval mechanism, bonding requirements, and procedures for environmental impact appraisal.³⁷ Section 228.4 of the Forest Service regulations requires any person proposing to conduct operations which might cause disturbance of surface resources to file a notice of intention to operate with the appropriate district ranger.³⁸ A plan of operations must be submitted to the district ranger, if the district ranger determines that the proposed operations would cause significant disturbance of surface resources.³⁹ In addition, in reviewing the plan of operations, section 228.5 of the Forest Service regulations requires the district ranger to balance the economics of the planned operation with the environmental impact on surface resources to determine the reasonableness of the operation plan.⁴⁰

32. 36 C.F.R. § 228.1-.80 (1987).

33. 16 U.S.C.A. §§ 1600-87 (West 1979) (originally enacted as Act of Aug. 17, 1974, Pub. L. No. 93-378, § 1, 88 Stat. 476 (1974)).

34. *Id.* §§ 1604-14 (West 1979 & Supp. 1987).

35. 36 C.F.R. § 228.1 (1987).

36. 36 C.F.R. § 228.8 (1987).

37. S. Dempsey, *Forest Service Regulations concerning the Effect of Mining Operations on Surface Resources*, 8 NAT. RES. LAW. 481 (1975) (discussing the background and ramifications of the Forest Service regulations).

38. 36 C.F.R. § 228.4 (1987). *See also id.* §§ 228.3 (a), 228.3(c), 228.3(d) (regulating any individual, partnership, corporation, association, or other legal entity engaging in all functions, work, and activities in connection with prospecting, exploration, development, mining or processing or mineral resources and all uses reasonably incident thereto, on any unpatented mining claim in the National Forest System).

39. *Id.* § 228.4(a).

40. *Id.* §§ 228.4(c)(3), 228.4(f), 228.5(a), 228.8. The Forest Service makes land use

In 1976, Congress amended the RPA by adopting the National Forest Management Act.⁴¹ NFMA directs the Forest Service to adopt regulations regarding the development and revision of land management plans for the protection, use, and development of the renewable resources in the National Forest System.⁴² To accomplish the purposes of the NFMA, the Forest Service must develop an individual land and resource management plan for each administrative unit of the National Forest System.⁴³ Furthermore, the Forest Service must establish an advisory board for formulation of the standards and guidelines for the Forest Service programs.⁴⁴ Finally, the Forest Service must give federal, state, local governments and the public adequate notice and an opportunity to comment upon the Forest Service program.⁴⁵

The Forest Service regulations require a mining claimant working within the National Forest System to comply with both Federal and State environmental standards, including air, water, and waste disposal standards.⁴⁶ Although the NFMA directs the Forest Service to coordinate the forest plans with the planning processes of other state and local governments, the NFMA does not mandate compliance with state or local land use plans.⁴⁷ Ultimately, the Forest Service determines the resource protection standards necessary to comply with NFMA through implementation of the forest plans.⁴⁸

determinations through its review of a mining plan of operations. *Granite Rock*, 107 S.Ct. at 1433-34 (Powell, J.,dissenting). See also Freyfogle, *supra* note 27, at 675. BLM and the Forest Service translate the multiple policy goals into specific decisions deciding the best blend of resource uses and carry out that decision by dedicating the parcel to the designated uses. *Id.*

41. 16 U.S.C.A. §§ 1604-14 (West 1979 & Supp. 1987). See generally W. O'Riordan, S. Horngren, *The Minimum Management Requirements of Forest Planning*, 17 ENVTL. L. 643 (1987) (criticizing the utilization of minimum management requirements in the forest planning process as a systematic refusal by the Forest Service to comply with the requirements of the National Forest Management Act); D. Teeguarden, *Benefit-Cost Analysis in National Forest System Planning: Policy, Uses, and Limitations*, 17 ENVTL. L. 393 (1987) (examining benefit-cost analysis as a method to guide Forest Service decision making); Comment, *The National Forest Management Act of 1976: A Critical Look at Two Trees in the NFMA Forest*, 22 LAND & WATER L. REV. 413 (1987) (discussing the effects of the National Forest Management Act upon local communities and Wyoming legislation).

42. See S. REP. NO. 94-893, 94th Cong., 2d Sess., reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 6662.

43. 36 C.F.R. § 219.27 (1987). See Comment, *supra* note 41, at 416. The individual management plan controls all management decisions for the forest and specifies the minimum resource protection standards necessary to comply with the NFMA. *Id.* See also O'Riordan & Horngren, *supra* note 41, at 646.

44. 16 U.S.C.A. § 1612(b) (West 1979 & Supp. 1987).

45. *Id.* § 1612(a).

46. 36 C.F.R. § 228.8 (1987).

47. *Id.* § 219.6.

48. *Id.* § 219.27.

3. Federal Coastal Zone Regulations

Congress enacted the Coastal Zone Management Act of 1972 (CZMA)⁴⁹ to encourage and assist coastal states in implementing management programs for the coastal zone of the United States.⁵⁰ Under the CZMA, the Secretary of Commerce may make grants to any coastal state to assist the state in the development, completion, and initial implementation of a management program for the land and water resources of its coastal zone.⁵¹ Once a state coastal plan has been approved,⁵² section 307(c)(3)(A) of the CZMA requires federally permitted private activity, including mining operations, to be consistent with approved state coastal programs.⁵³

Under the CZMA, federally permitted activities occurring in the coastal zone or affecting land and water uses in the coastal zone

49. 16 U.S.C.A. §§ 1451-64 (West 1979 & Supp. 1987).

50. *Id.* § 1452(1). S. REP. 92-753, 92d Cong., 2d Sess., reprinted in 1972 U.S. CODE CONG. & ADMIN. NEWS 4776. A coastal state borders on the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. 16 U.S.C.A. 1454(4) (West 1979 & Supp. 1987). The coastal zone includes coastal waters, adjacent shorelands, islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. *Id.* § 1453(i). The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal water. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government. The Department of Commerce has interpreted section 1453(i) to exclude all federally-owned land from the CZMA definition of state coastal zones. *Id.* See *Granite Rock*, 107 S.Ct. at 1429; 15 C.F.R. § 923.33 (1987).

51. 16 U.S.C.A. §§ 1454(a), (c)-(g), 1454(i) (West. 1979 & Supp. 1987).

52. To qualify for a federal grant, the state management program must define the permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters and identify the means by which the state proposes to exert control over the land and water uses. *Id.* §§ 1454(b)(2), (4) (West 1979 & Supp. 1987). The state coastal program must designate a single agency to receive and administer the grants for implementing the management program with the authority necessary to administer and regulate, directly or indirectly, land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses. *Id.* §§ 1455(c)(5)-(6), (d)(1), (e)(1) (West 1979 & Supp. 1987). See Comment, 28 U. MIAMI L. REV. 135, 188 (1973) (advocating a combination of federal, state, and local controls to obtain effective land management of federal land). In developing and adopting the management program, the state must provide for full participation by relevant federal and state agencies, local governments, regional organizations, and other interested public and private parties; coordinate the coastal management program with local, areawide, and interstate plans applicable to the area within the coastal zone; and establish an effective mechanism for continuing consultation and coordination to assure the full participation of local governments and agencies. 16 U.S.C.A. §§ 1455(c), (c)(2)(A)-(B), (c)(8), (d)(1) (West 1979 & Supp. 1987). Additionally, the state plan must adequately consider the national interest and the views of federal agencies principally affected by the coastal program. *Id.* § 1456(b).

53. 16 U.S.C.A. § 1456(c)(3)(A) (West 1979 & Supp. 1987).

must be fully consistent with state coastal programs.⁵⁴ Therefore, the federal permit application must include verification that the proposed activity complies with, and will be conducted in a manner consistent with, the state coastal program.⁵⁵ The federal agency may not issue the permit until the state coastal agency concurs with the applicant's certification or until, by the failure of the state to act, the concurrence is conclusively presumed.⁵⁶

The CZMA indicates that Congress did not intend to diminish state authority through federal preemption.⁵⁷ Rather, Congress intended to enhance state authority by encouraging and assisting state planning and regulatory power over coastal zones.⁵⁸ Therefore, federally permitted activities occurring within the coastal zone or which affect land and water uses in the coastal zone must be fully consistent with state coastal programs.⁵⁹

C. California Coastal Act

California passed the Coastal Act of 1976⁶⁰ as a comprehensive scheme to govern land use planning for the entire coastal zone of California.⁶¹ The goals specified under the California Coastal Act include protecting and enhancing the coastal zone environment, balancing the use and conservation of coastal zone resources, maximizing public access to the coastal zone, assuring priority for coastal-dependent and coastal-related development, and encouraging state

54. 15 C.F.R. § 930.32(a) (1987). See T. Eichenberg, *Federal Consistency Doctrine*, 14 *Ecology L. Q.* 9, 25-30 (1987) (discussing the federal consistency doctrine and recent challenges to the authority of the coastal states).

55. 16 U.S.C.A. § 1456(c)(3)(A) (West 1979 & Supp. 1987).

56. *Id.* If the state rejects the certification, the Secretary of Commerce may still grant the permit after finding that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. *Id.*

57. *Granite Rock*, 107 S.Ct. at 1430-31; S. REP. No. 92-753, 92d Cong., 2d Sess., reprinted in 1972 U.S. CODE CONG. & ADMIN. NEWS 4776.

58. S. REP. 92-753, *supra* note 57, at 4776. See *Granite Rock*, 107 S.Ct. at 1430-31.

59. 16 U.S.C.A. § 1456(c)(3)(A) (West 1979 & Supp. 1987).

60. CAL. PUB. RES. CODE §§ 30000-30900 (West Supp. 1988).

61. See *American Petroleum Inst. v. Knecht*, 609 F.2d 1306, 1309 (9th Cir. 1979). In November 1972, voters approved the California Conservation Act, which established the California Coastal Commission and six regional commissions to prepare a comprehensive plan for the long-range development and conservation of the coastal zone resources of the state. In 1975, the commission submitted its plan to the legislature and governor for approval. In 1976, the California legislature enacted the California Coastal Act which is similar to the Commission's proposed plan. *Id.* See also *Review of Selected 1976 California Legislation*, 8 *PAC. L.J.* 351, 353-354 (1976) [hereinafter *1976 Legislation*] (discussing and analyzing the California Coastal Act).

and local initiatives and cooperation.⁶² The California Coastal Commission assumes primary responsibility for implementing the California Coastal Act provisions and exercises any and all powers set forth in the CZMA.⁶³

Under the California Coastal Act, all local governments within the coastal zone must prepare and submit to the California Coastal Commission a local coastal plan, which includes the land use plans and zoning ordinances of the local government.⁶⁴ A local coastal program must promote public access to the sea and shorelines, recreational uses, protection of the marine environment and land resources, and coastal and industrial development.⁶⁵ Additionally, any development in the coastal zone requires a coastal development permit.⁶⁶

Prior to the certification of local coastal programs, permits may be obtained from the local government if the local government has chosen to implement a permit process and has prepared procedures that are in accord with the guidelines issued by the California Coastal Commission.⁶⁷ If the local government does not implement a permit process, a coastal development permit must be obtained from the California Coastal Commission.⁶⁸ Once the local coastal programs are approved and all implementing actions are effective, permits must be obtained from the local government implementing the local coastal program.⁶⁹ Except for an appeal to the California Coastal Commis-

62. CAL. PUB. RES. CODE §§ 30001.5(a)-(e) (West Supp. 1988).

63. *Id.* § 30300-30355. See 1976 Legislation, *supra* note 61, at 356-57.

64. CAL. PUB. RES. CODE § 30500(a) (West Supp. 1988). See *Yost v. Thomas*, 36 Cal. 3d 561, 566, 685 P.2d 1152, 1154-55, 205 Cal.Rptr. 801, 804 (1984) (deciding that the California Coastal Act does not preempt local planning authority or the power of the voters to act through referendum). A local coastal program is the land use plans, zoning ordinances, zoning district maps, and/or the implementing actions of the local government, which meet the requirements of the Coastal Act. CAL. PUB. RES. CODE § 30108.6 (West Supp. 1988). Land use plans of the local government indicate the kinds, locations, and intensity of land uses, the applicable resource protection and development policies and a listing of implementing actions. *Id.* § 30108.5.

65. CAL. PUB. RES. CODE §§ 30210-13, 30220-24, 30230-36, 30241-44, 30250-55, 30260-64 (West Supp. 1988).

66. *Id.* § 30600(a). Development includes grading, removing, dredging, mining, or extraction of any materials. *Id.* § 30106. The coastal zone of California encompasses the land and water area from the Oregon border to the border of the Republic of Mexico, extending seaward to the outer limit of jurisdiction of California and extending inland generally 1,000 yards from the mean high tide line of the sea. *Id.* § 30103(a). In significant coastal estuarine, habitat, and recreational areas, the coastal zone extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea. *Id.*

67. *Id.* § 30600(b).

68. *Id.* § 30600(c).

69. *Id.* § 30600(d).

sion from the denial of a coastal development permit, the California Coastal Commission duties are limited to conducting five-year reviews, certifying local coastal program amendments, and making original permitting decisions for a small class of extra-sensitive coastal lands.⁷⁰

D. Case Law

Beginning with the 1976 Idaho Supreme Court decision of *State ex rel. Andrus v. Click*,⁷¹ state and federal courts disagreed about permissible state regulation of private mining on federal land.⁷² The Idaho, Colorado, and Wyoming Supreme Courts permitted state and local governments to regulate, but not prohibit, private mining on federal lands.⁷³ In contrast, the Ninth Circuit Court of Appeals found that a county permit system interfered with the purposes and objectives of Congress, concluding that Forest Service regulations pre-empted local environmental regulations.⁷⁴

In *Andrus v. Click*, the Idaho Supreme Court ordered Click, a miner, to obtain the requisite state permit to continue mining operations on unpatented federal land in the St. Joe National Forest.⁷⁵ Under the Idaho Dredge and Placer Mining Protection Act,⁷⁶ the

70. *Id.* §§ 30519(b), 30519.5, 30514, 30601, 30603. See F. Slimp II, *The Sovereign Commission: of Coastal Permits, Continuing Jurisdiction, and Vanishing Local Independence*, SW. U.L. REV. 699, 702 (1986) (criticizing the Coastal Commission for trying to prolong its existence through monitoring post-certification activities).

71. *State ex. rel. Andrus v. Click*, 554 P.2d 969 (Idaho 1976).

72. Compare *Andrus*, 554 P.2d 969 (permitting state to require a permit from miners operating within the St. Joe National Forest on grounds that states could regulate but not prohibit federally permitted private activity), and *Brubaker v. Board of County Comm'rs*, 652 P.2d 1050 (Colo. 1982) (invalidating county permit on grounds county denied permit to drill in the Pike National Forest but indicating a permit system is permissible provided federally permitted activities were not prohibited) and *Gulf Oil v. Wyoming Oil & Gas*, 693 P.2d 227 (Wyo. 1985) (upholding state permit of federally permitted activity on ground that Congress did not intend to occupy the entire field of environmental regulations and state regulation implemented the national policy of environmental protection) with *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080 (9th Cir. 1979), *aff'd mem.*, 445 U.S. 947 (1980) (invalidating county permit requirement of federally permitted activity ruling that the local ordinances directly conflicted with federal law by allowing the county to temporarily or permanently prohibit the use of federal lands).

73. See *Gulf Oil*, 693 P.2d at 227; *Brubaker*, 652 P.2d at 1050; *Andrus*, 554 P.2d at 969; *Ventura*, 601 F.2d at 1080. See generally Freyfogle, *supra* note 27, at 658-71.

74. Freyfogle, *supra* note 27, at 658-71.

75. *Andrus*, 554 P.2d at 972.

76. The Idaho Dredge and Placer Mining Protection Act was enacted in 1955. See *Andrus*, 554 P.2d at 973. The Act requires operators of dredge or placer mines on lands and beds of streams in the State of Idaho to obtain a permit by paying a set fee and obtaining a surety bond. *Id.*

permit could be denied, if the State Board of Land Commissioners determined that the mining operation was not in the public interest.⁷⁷ Applying a preemption analysis, the court ruled that the state permit did not directly conflict with federal law.⁷⁸ Although the state reserved the right to deny the permit and prevent mining on federal land, the court concluded that as long as mining on Federal land is not prohibited, the state could impose higher environmental standards.⁷⁹ Furthermore, the court concluded that the Idaho act did not interfere with the purposes and objectives of the mining laws.⁸⁰ The court determined that Congress intended to promote mining but minimize the adverse environmental impacts of mining.⁸¹ The court concluded that the Idaho act upheld the intent of Congress by fostering environmental protection, while not prohibiting all mining activities.⁸²

In *Brubaker v. Board of County Commissioners*,⁸³ the Colorado Supreme Court invalidated a county zoning ordinance which allowed El Paso County to deny a permit to drill in the Pike National Forest.⁸⁴ The permit applicant received the necessary federal approval for the proposed drilling operation.⁸⁵ However, the county denied the permit because the operations were inconsistent with the long-range plans adopted by the county and incompatible with existing and permitted uses on surrounding properties.⁸⁶ In rejecting the zoning ordinance, the court distinguished between regulation and prohibition of federally permitted private activity on federal land.⁸⁷ The court recognized that the county could supplement the mining laws by imposing reasonable conditions upon the use of federal lands, particularly when dictated by environmental concerns, but the county could not prohibit activities contemplated and authorized by federal law.⁸⁸

77. See *id.* The Idaho Dredge and Placer Mining Act is administered by the Idaho State Board of Land Commissioners. The powers of the Board included the right to deny an application for a permit on any unpatented mining claims if the dredge mining operation would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat and other factors which in the judgment of the Board may be pertinent. *Id.*

78. *Id.* at 975. The applicable federal law includes the Mining Act of 1897, the Mining and Minerals Policy Act, and the National Environmental Policy Act. *Id.*

79. *Id.* at 975-76.

80. *Id.* at 976-77.

81. *Id.*

82. *Id.*

83. *Brubaker v. Board of County Comm'rs*, 652 P.2d 1050 (Colo. 1982).

84. *Id.* at 1053.

85. *Id.*

86. *Id.*

87. *Id.* at 1056-60.

88. *Id.* at 1059.

Contrary to the decisions of *Andrus* and *Brubaker*, the Ninth Circuit Court of Appeals, in *Ventura County v. Gulf Oil Corp.*,⁸⁹ invalidated a permit requirement under county zoning ordinances as preempted by federal law.⁹⁰ Similar to *Andrus*, the county could refuse to issue the permit if the drilling operations were not in the public interest.⁹¹ Gulf Oil leased from the Department of Interior 120 acres of land located within the Los Padres National Forest for purposes of oil exploration and development.⁹² Gulf received permits from the United States Department of Interior and the Forest Service.⁹³ After drilling operations commenced, Ventura notified Gulf that the county zoning ordinance prohibited oil exploration and extraction unless a permit was obtained from the county planning commission.⁹⁴ Gulf refused to comply.⁹⁵

Affirming the dismissal of the complaint filed by Ventura County, the court of appeals found a direct conflict between the local ordinance and federal laws.⁹⁶ The court concluded that the local ordinances stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by allowing the county to temporarily or permanently prohibit the federally authorized use of federal lands.⁹⁷ Contrary to the Idaho Supreme Court in *Andrus*, the Ninth Circuit Court of Appeals held that Ventura County could not regulate the drilling to protect the environment; environmental hazards incident to drilling were protected by the extensive regulations of the Department of Agriculture and the National Environmental Policy Act of 1969.⁹⁸

As demonstrated by the *Andrus*, *Brubaker*, and *Ventura* decisions, a split developed in the courts as to permissible state regulation of federally permitted mining on federal land. *Andrus* and *Brubaker* upheld state and local permits which did not prohibit but only regulated federally permitted mining. *Ventura* found local environmental regulations preempted by the Forest Service regulations.⁹⁹

89. *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080 (9th Cir. 1979).

90. *Id.* at 1082.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 1086. The applicable federal law includes the Mining Act of 1897, the Mineral Lands Leasing Act of 1920, the National Environmental Policy Act of 1969, and the Forest Service regulations. *Id.* at 1083-84.

97. *Id.* at 1086.

98. *Id.*

99. *See, supra* notes 72-98 and accompanying text.

II. THE CASE

In *California Coastal Commission v. Granite Rock*, the United States Supreme Court rejected a Supremacy Clause challenge concerning the constitutionality of a coastal development permit required by the California Coastal Commission under section 30600(a) of the California Coastal Act.¹⁰⁰ The Court limited the discussion to the issue of whether any state permit issued by the California Coastal Commission on unpatented mining claims in the National Forest System would be permissible.¹⁰¹ The Court held that states may regulate federally permitted mining by private parties in the National Forest System provided state regulations are imposed for environmental purposes.¹⁰² The Court implied, however, that a state coastal permit imposing land use regulations on unpatented mining claims would be preempted by the FLPMA and the NFMA.¹⁰³

A. Facts

Granite Rock ran a commercial mining operation on unpatented land in the Los Padres National Forest, located within the coastal zone as established by the CZMA and California Coastal Act.¹⁰⁴ From 1959 to 1980, Granite Rock removed relatively small samples of limestone for mineral analysis. In 1981, Granite Rock obtained the requisite approval by the Forest Service and began removing substantial amounts of limestone for resale to private purchasers. On October 17, 1983, the District Director of the California Coastal Commission informed Granite Rock that a permit was required to continue the mining operations and the five year plan of operations submitted to the Forest Service was subject to consistency review by the Commission. In October of 1983, Granite Rock filed suit in the United States District Court to enjoin the California Coastal Com-

100. *Granite Rock*, 107 S.Ct. at 1426.

101. *Id.* at 1431.

102. *Id.* at 1429.

103. *Id.* at 1427-29.

104. *Granite Rock v. California Coastal Comm'n*, 590 F. Supp. 1361, 1366 (1984). Granite Rock was engaged in commercial mining of a valuable five to seven-acre quarry of high calcium whiting grade limestone, estimated value \$15,000. *Id.* The mining activity in Big Sur included blasting and opening a quarry, constructing and improving roads, building a bridge, boring test holes and conducting core drilling, improving a water storage system, and dumping rock waste in a disposal area. *Id.*

mission from requiring a coastal development permit and consistency review of the five year plan of operations.¹⁰⁵ The District Court denied the motion for summary judgment made by Granite Rock and dismissed the complaint.¹⁰⁶ The Ninth Circuit Court of Appeals reversed.¹⁰⁷

B. The Majority Opinion

In an opinion written by Justice O'Connor, the United States Supreme Court reversed the decision of the appellate court.¹⁰⁸ The Supreme Court held that the permit required by the California Coastal Commission is facially permissible, provided the state only imposes reasonable environmental regulations on mining within the National Forest System.¹⁰⁹ First, the Court explored whether the Federal environmental regulations of unpatented mining claims in the National Forest System demonstrates an intent to preempt state regulation.¹¹⁰ Second, the Court examined the intent of Congress to limit the state to a purely advisory role in federal land management decisions.¹¹¹ Finally, the Court considered whether the CZMA excludes federal land from state coastal zone management.¹¹²

1. Federal Environmental Regulations

The Court observed that the Mining Act of 1872 and the Forest Service regulations do not express an intent to preempt state law.¹¹³

105. *Id.*

106. *Id.* at 1375. The district court concluded that the Coastal Commission sought not to prohibit or veto, but to regulate the mining activity in accordance with the detailed requirements of the Coastal Act which provides for permit issuance upon compliance with regulatory requirements comparable to those of the Forest Service. *Id.* If the permit issued by the Coastal Commission prevented Granite Rock from exercising federally authorized activities, then the court would enjoin the enforcement of the permit. *Id.*

107. *Granite Rock v. California Coastal Comm'n*, 768 F.2d 1077, 1083 (9th Cir. 1985). In reversing the lower court, the appellate court recognized that the Forest Service regulations recognize that a state could enact environmental regulations in addition to those established by federal agencies. However, the appellate court believed that an independent state permit system to enforce state environmental standards would undermine the permit system of the Forest Service. The court concluded that to allow a second tier of permit authority to be exercised by the state would undermine the ability of the Forest Service to keep the applicable environmental requirements within the range of reasonableness. *Id.*

108. *Granite Rock*, 107 S.Ct. at 1424.

109. *Id.* at 1426-27.

110. *Id.* at 1425-27.

111. *Id.* at 1425, 1427-29.

112. *Id.* at 1425, 1429-31.

113. *Id.* at 1426.

The Court held that the Mining Act and the Forest Service regulations require compliance with state law.¹¹⁴ The Court observed that the Forest Service regulations require Granite Rock to comply with California air, water, and waste disposal standards, noting that under Forest Service regulations compliance with state environmental regulations fulfills similar or parallel Forest Service requirements.¹¹⁵ Additionally, the Forest Service environmental assessment of the plan of operations submitted by Granite Rock states that Granite Rock was to obtain any necessary permits which may be required by the California Coastal Commission.¹¹⁶ Therefore, the Court held that the Forest Service regulations do not indicate a federal intent to preempt state environmental regulations of unpatented mining claims in the National Forest System.¹¹⁷

2. Role of the States in Federal Land Management

The Court noted that Granite Rock chose to seek injunctive and declaratory relief prior to applying for the coastal development permit.¹¹⁸ Therefore, the Court limited its constitutional analysis to whether any possible set of conditions attached to the coastal development permit would be preempted.¹¹⁹ The Court assumed for the discussion of the case, that the NFMA and the FLPMA preempt state land use plans of unpatented mining claims in the National Forest System.¹²⁰ The Court distinguished land use from environmental regulations,¹²¹ remarking that while the California Coastal Act gives the California Coastal Commission land use and environ-

114. *Id.* at 1426-27. See 36 C.F.R. §§ 228.5(b), 228.8(a)-(c), (h) (1987).

115. *Granite Rock*, 107 S.Ct. at 1426-27.

116. *Id.* at 1427.

117. *Id.* at 1426-27.

118. *Id.* at 1429.

119. *Id.*

120. *Id.* at 1427.

121. *Id.* at 1428-29. The Court distinguished land use regulations from environmental regulations by defining the former as choosing particular uses for the land while the latter 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. The Court relied on 43 U.S.C.A. § 1712(c)(9) and 36 C.F.R. § 228.1 as congressional indication of the distinction between land use planning and environmental regulations. Additionally, the Court relies on the split of authority between the Department of the Interior to regulate the management of minerals in the National Forest System and the Department of Agriculture to regulate surface resources. *Id.*

mental regulatory authority, section 30004 of the California Coastal Act¹²² also gives the Commission the ability to limit the requirements placed on the permit.¹²³ Consistent with the view of the Court that the Forest Service regulations do not preempt all state environmental regulations, the Court stated that the California Coastal Commission may issue permits imposing reasonable environmental regulations.¹²⁴

3. *Federal Land within State Coastal Zone*

Finally, the Court acknowledged that the Department of Commerce interpreted section 1453(a) of the CZMA to exclude all federally owned land from the CZMA definition of the coastal zone of a state.¹²⁵ However, the Court indicated that even if federal land was excluded from the coastal zone of the state, the CZMA does not automatically preempt all state regulation of mining on federal land.¹²⁶ The Court held that Congress clearly indicated that the CZMA would not be an independent cause of preemption except in cases of actual conflict.¹²⁷ The Court indicated that the barren record of the facial challenge did not demonstrate a conflict between the permit requirement of the California Coastal Commission and federal law.¹²⁸ However, the Court concluded that any future application of the California Coastal Commission permit which did conflict with federal law would not be approved.¹²⁹

C. *Dissenting Opinions*

Dissenting, Justice Powell and Justice Stevens wrote that the Court focused on selected provisions of the federal statutes, to the exclusion of other relevant provisions and the larger regulatory context by examining the Forest Service regulations apart from the statutes that

122. See CAL. PUB. RES. CODE § 30004 (West Supp. 1988).

123. *Granite Rock*, 107 S.Ct. at 1428. In relying on Public Resources Code section 30004, the Court held that since the California Coastal Act does not detail exactly what standards will and will not apply to federal activity, the Coastal Act must be understood to allow the California Coastal Commission to limit the regulations it will impose on federally authorized mining activity. *Id.*

124. *Id.* at 1429.

125. *Id.*

126. *Id.* at 1430-31.

127. *Id.*

128. *Id.* at 1432.

129. *Id.*

authorized the regulations.¹³⁰ The dissent observed that the Forest Service regulations explicitly require federal permit applicants to comply with state air, water, and solid waste standards which are preserved by specific nonpreemption clauses in other federal statutes.¹³¹ The dissent concluded that the specific preservation by the Forest Service of state air, water, and solid waste standards hardly suggests an implicit intent to allow the state to apply other environmental regulations to private mining on federal land.¹³²

Justices Powell and Stevens noted that the federal permit system reflects a careful balance between two important federal interests: the development of mineral resources on federal land and the protection of the national forests from environmental harm.¹³³ The dissent concluded that by allowing states to issue a permit before mining operations could proceed gives the state the power to strike a different balance between mineral development and environmental protection and forbid federally approved activity.¹³⁴

Justice Scalia and Justice White also dissented.¹³⁵ In their opinion, the California Coastal Act is a land use statute and the permit is a land use control device preempted by the FLPMA and the NFMA.¹³⁶ Justices Scalia and White based their conclusion on the CZMA criteria for federal approval of state coastal programs and the state-approved local coastal programs which consist of land use plans and implementing devices.¹³⁷ The Justices concluded that the coastal permit constitutes a regulation of the use of federal land and is thus preempted by the NFMA and the FLPMA.¹³⁸

III. LEGAL RAMIFICATIONS

Granite Rock allows the California Coastal Commission, acting under the authority granted to the Commission by the California

130. *Id.* at 1434.

131. *Id.* at 1434-35. The dissent cited the Clean Air Act, the Clean Water Act, and the Solid Waste Disposal Act. *Id.* See 33 U.S.C.A. § 1323(a) (West 1979 & Supp. 1987) (the Clean Water Act), 42 U.S.C.A. §§ 6961, 7418(a) (West 1979 & Supp. 1987) (the Solid Waste Disposal Act and the Clean Air Act).

132. *Granite Rock*, 107 S.Ct. at 1435.

133. *Id.* at 1437-38.

134. *Id.*

135. *Id.* at 1438.

136. *Id.* at 1439. See *Comment*, *supra* note 52, at 153-165 (describing the types of land use statutes which include zoning ordinances, open space zoning, subdivision controls, and permits).

137. *Granite Rock*, 107 S.Ct. at 1439-42.

138. *Id.* at 1441.

Coastal Act and the CZMA, to impose reasonable environmental regulations upon federally authorized private activity, such as mining.¹³⁹ The Court employed new criteria by distinguishing land use from environmental regulations rather than following the *Andrus* and *Brubaker* decisions distinguishing regulation from prohibition.¹⁴⁰ In addition, the Court implicitly overruled the decision in *Ventura*.¹⁴¹ The Court indicated that federally permitted private activity which falls within the National Forest System must apply for a coastal development permit.¹⁴² Therefore, following the *Granite Rock* decision, leasing operations which fall within the coastal zone of the state must obtain a coastal development permit which may impose additional environmental regulations.¹⁴³

The California Coastal Commission possesses the potential to prohibit federally permitted private activity.¹⁴⁴ Section 307(c)(3)(A) of the CZMA requires federally permitted activity to be fully consistent with approved state coastal programs.¹⁴⁵ If the activity does not meet the additional environmental regulations imposed by the Commission, the Commission may deny approval and the federal agency may not issue a federal permit.¹⁴⁶ As Justices Powell and

139. *Id.* at 1429.

140. Compare *Granite Rock*, 107 S.Ct. at 1425-29 (the Court distinguished between land use and environmental regulations indicating that the NFMA and the FLPMA preempt state land use plans of unpatented mining claims in the National Forest System) with *Andrus*, 554 P.2d at 975-76 (permitting state to require a permit from miners within the National Forest System on grounds that state could regulate but not prohibit federally permitted private activity) and *Brubaker*, 652 P.2d at 1059 (permitting a permit system provided federally permitted activities were not prohibited).

141. Compare *Granite Rock*, 107 S.Ct. at 1425-29 (holding that states may regulate federally permitted mining by private parties in the National Forest System provided state regulations are imposed for environmental purposes) with *Ventura County*, 601 F.2d at 1086 (holding that environmental hazards incident to drilling were protected by the extensive regulations of the Department of Agriculture and the National Environmental Policy Act of 1969). See also, Leshy, *Granite Rock and The States' Influence Over Federal Land Use*, RESOURCE LAW NOTES, February 1988, at 6 (analyzing the unanswered questions left by the *Granite Rock* decision) (on file at P.L.J.).

142. *Granite Rock*, 107 S.Ct. at 1431-32.

143. PUB. LANDS NEWS, April 2, 1987, at 1. Under the California Coastal Act, development includes extraction of any materials. CAL. PUB. RES. CODE § 30106 (West Supp. 1988). See also Leshy, *supra* note 141, at 9 (indicating that the *Granite Rock* decision has implications outside the framework of the Mining Law because the decision is grounded on the distinction between environmental and land use regulations).

144. See Eidenberg, *supra* note 54, at 28 (comparing federal activities which only need to be consistent to the maximum extent practicable with the state coastal program to federally permitted activity which needs to be fully consistent with the state coastal program).

145. Coastal Zone Management Act, 16 U.S.C.A. § 1456 (c)(3)(A) (West 1979 & Supp. 1987).

See Leshy, *supra* note 141, at 6.

146. Coastal Zone Management Act, 16 U.S.C.A. § 1456 (c)(3)(A) (West 1979 & Supp.

Stevens indicated in their dissent, the Commission has the power to strike a different balance between mineral development and environmental protection and possesses the potential to forbid activity otherwise approved by the Forest Service.¹⁴⁷

However, the majority hinted that both the FLPMA and the NFMA preempt state land use regulations.¹⁴⁸ States can not issue a permit which seeks to mandate particular uses of the federal land.¹⁴⁹ The California Coastal Commission must issue an environmental permit which does not impose land use restrictions.¹⁵⁰ Therefore, the Commission may require additional environmental safeguards but may not control the use of federal land by denying a permit or state land use plans.¹⁵¹ In addition, if the Commission imposes environmental regulations which actually conflict with the federal objective to encourage mining upon federal land, federal mining and forest regulations would preempt the state coastal regulation.¹⁵²

The majority stated that although the California Coastal Commission has the authority to issue regulations governing land use and environmental protection, section 30004 of the California Coastal Act allows the California Coastal Commission to limit the requirements it will place on the permit.¹⁵³ Therefore, the California Coastal Commission may impose environmental regulations even though the California Coastal Act also gives the California Coastal Commission land use regulatory authority.¹⁵⁴ However, under section 30519.5, once the local coastal plan is approved and all implementing actions have become effective, all permits must be issued by the local government.¹⁵⁵ The California Coastal Commission may only hear appeals from local permit decisions.¹⁵⁶ The Court indicated that the

1987). See Leshy, *supra* note 141, at 6.

147. *Granite Rock*, 107 S.Ct. at 1437-38. See Leshy, *supra* note 141, at 6.

148. *Granite Rock*, 107 S.Ct. at 1427-29.

149. PUB. LANDS NEWS, April 16, 1987, at 5. See also *Granite Rock*, 107 S.Ct. at 1427-29.

150. PUB. LANDS NEWS, April 16, 1987, at 5.

151. *Id.*

152. *Granite Rock*, 107 S.Ct. at 1452. See Leshy, *supra* note 141, at 7. In discussing how far a state could go in denying or imposing conditions on permits, Leshy suggested a two step analysis: first, how far the state can go in regulating before it is preempted by federal law and second, how far the state can go in regulating before it unconstitutionally takes whatever property right the miner possesses. *Id.*

153. *Granite Rock*, 107 S.Ct. at 1428.

154. *Id.* at 1428-29.

155. CAL. PUB. RES. CODE §§ 30519.5, 30600(d) (West Supp. 1988).

156. *Id.* § 30519.5.

permit in question did not involve a local coastal program which is based on land use plans and zoning ordinances.¹⁵⁷ Therefore, local governments may be prevented from imposing environmental regulations upon federal activities which fall within their coastal zone if section 30004 of the California Coastal Act does not allow the local governments to limit the requirements the local governments will place on the permit.¹⁵⁸

CONCLUSION

In *California Coastal Commission v. Granite Rock*, the United States Supreme Court rejected the facial challenge by Granite Rock to the permit required by the California Coastal Commission to mine on National Forest land. Although the Forest Service regulations require compliance with state air, water, and waste disposal standards, the California Coastal Commission may supplement the federal regulations with additional environmental requirements. Under the *Granite Rock* decision, the state possesses the power to prohibit federally approved activity on federal land by private individuals. However, the Court hinted that the state could not impose land use restrictions nor could the state permit directly conflict with federal mining, forest, and coastal regulations.

Laura J. Baird

157. *Granite Rock*, 107 S.Ct. at 1427-29.

158. The Court distinguished between a permit issued directly by the California Coastal Commission under section 30600(c) and a permit issued by the local government under sections 30600(b) or 30600(d) of the California Coastal Act which includes land use plans and zoning ordinances. *Id.* See Leshy, *supra* note 141, at 8. Leshy indicates that the Forest Service, the Bureau of Land Management and Congress would be more willing to allow state regulation on federal lands than to tolerate regulation by every county, village, or special government district. *Id.*

