While 2016 was a quiet year for the U.S. Supreme Court when it came to environmental law, the same cannot be said for the California Supreme Court. To the contrary, 2016 continued a pronounced and significant trend by the California Supreme Court justices in recent years to hear and decide numerous important environmental law issues and cases.

Here is my list of the California Supreme Court's five most important decisions from this past year:

5. ***Orange Citizens for Parks and Recreation v. Superior Court*****.** In this land use case, city officials had in 1973 adopted a resolution designating a particular parcel as suitable for "low density" development. However, city records were never updated to reflect that action, and the city's 2010 General Plan continued to list the property as "open space." A developer cited the 1973 resolution as authority for approving his development, and the city council agreed, notwithstanding the contrary city General Plan designation of the affected property. In a unanimous opinion authored by Justice Goodwin Liu, the Supreme Court nullified the council's decision approving the project. The justices declared that a local general plan is the "constitution for all future developments within the city," and held that the public had a right to rely on the plan's designation of affected regions and properties. *Orange Citizens* represents a clear-cut win for sound and transparent California land use planning principles.

4. ***Friends of the College of San Mateo Gardens v. San Mateo Community College District*****.** For years the California Environmental Quality Act (CEQA) has been a key focus of the California Supreme Court's environmental jurisprudence. 2016 was no exception. The issues in *San Mateo Gardens* were how CEQA environmental review should account for changes in a proposed project, and how much deference reviewing courts should give administrative agencies in making that determination. Here a community college district had prepared a negative declaration in connection with its decision to alter a college campus by demolishing certain buildings and renovating others. A few years later, the district modified the project by proposing to demolish one building previously scheduled for renovation and to renovate two buildings earlier slated for demolition. The district relied on its original CEQA documents, finding that the modified plans didn't require further CEQA review. The California Supreme Court agreed, declaring that an agency's environmental review obligations under CEQA depend on the effect of project changes on the decision-making process, rather than on an arbitrary classification of the project as "old" versus "new." And, declared the justices, courts should assess such administrative determinations under a variation of the deferential, "substantial evidence" standard of review. *San Mateo Gardens* continues the California Supreme Court's middle-of-the-road stance in interpreting and applying CEQA. It also exemplifies a recent trend of the justices to reject "bright line"

rules in CEQA cases in favor of more nuanced decisions that often provide precious little guidance to CEQA practitioners and lower courts alike.

3. *People v. Rinehart*. *Rinehart* is a somewhat unusual but nonetheless important decision involving environmental enforcement and federal preemption. Defendant Rinehart was prosecuted criminally for using suction dredging equipment to mine for gold in a California river–a technology the State of California bans due to its adverse impact on a variety of fish species that use river bottoms to spawn. Rinehart defended his actions by noting that the river in question was located within federally-owned lands, claiming that the federal Mining Law of 1872 preempts application of California's state ban on suction dredging. Not so, ruled Justice Kathryn Werdegar on behalf of a unanimous Supreme Court: the Mining Law protects private prospectors' mining claims against those of third parties, but does not supersede the states' police power to adopt laws designed to protect the environment. Justice Werdegar's opinion displays deep expertise regarding and affection for the history of California's public lands. But its critical significance is in rejecting a sweeping claim of federal preemption in favor of a strong judicial defense of state (and local) environmental regulation. That's particularly important in light of anticipated preemption-based challenges to a variety of California's environmental statutes and regulations brought by industry and–perhaps–the Trump Administration. (The Court and California prosecutors were aided mightily in *Rinehart* by an *amicus* brief the U.S. Justice Department filed, arguing that the state's suction dredging ban is *not* preempted by federal law; don't expect similar examples of cooperative federalism in the courts after January 20th.)

2. *Property Reserve, Inc. v. Superior Court*. *Property Reserve* is one case that's as important for its factual context as it is for the legal principles it establishes. That's because the litigation involves a private property owner-based challenge to California Governor Jerry Brown's controversial "twin tunnels" proposal to divert freshwater supplies around the Sacramento-San Joaquin Delta to serve agricultural and urban water demands in the San Joaquin Valley and Southern California. The Department of Water Resources (DWR) sought access to numerous privately-owned parcels in the path of the proposed project to perform necessary environmental and geological testing of the lands' suitability for the twin tunnels project. Project opponents refused access to their land, arguing that such government activity on their property would trigger a compensable government "taking" of their lands for which compensation would be required. DWR, they claimed, was first required to initiate formal eminent domain proceedings and compensate them for the anticipated harm and disruption to their lands. The Supreme Court unanimously rejected that argument, finding that California's existing precondemnation statutory procedures adequately protect

private property, and that the property owners had no legal right to demand commencement of formal eminent domain proceedings before allowing DWR to conduct the required testing. The Supreme Court's decision in *Property Reserve* represents a rather Solomonic balancing of government's need for careful project planning and private property rights, while at the same time removing a significant legal obstacle to Governor Brown's twin tunnels project.

1. *Department of Finance v. Commission on State Mandates*. This decision, probably the single most important environmental opinion the Supreme Court issued in 2016, is in one sense more focused on public finance than on environmental law. But its enormous fiscal impact is overshadowed by the decision's deleterious effect on California's efforts to abate water pollution under regulatory authority delegated to the state under the federal Clean Water Act. As recounted in more detail in a previous post, *Department of Finance* involves local governments' claim that state Regional Water Quality Control Board regulations designed to minimize the locals' stormwater discharges are not mandated by the federal Clean Water Act but, rather, by the Regional Board's own discretionary policies. The distinction is critical, because under the California Constitution *state* (as opposed to federal) mandates on local governments must be reimbursed by the state. In *Department of Finance*, a bare 4-3 majority of the Court ruled in favor of the local governments, finding that the Regional Board's stormwater discharge requirements constitute a reimbursable state mandate. As the earlier post notes, the majority decision is wrong in its interpretation of the Clean Water Act's relevant substantive provisions, and has profound, adverse public policy consequences; both points are made quite persuasively by the dissenting justices in the case. In addition to the unwarranted, billion dollar hit on state revenues, the decision perversely incentivizes California regulators to return to the USEPA the water pollution permitting authority the State of California volunteered to assume under the Clean Water Act back in 1973.

In sum, while the other four California Supreme Court decisions from 2016 listed above are correctly decided, the irony is that the single most important environmental decision the Court decided this year–*Department of Finance*–is the one it got wrong.

The California Supreme Court and Environmental Law in 2017

2017 promises to be another important year for environmental law in the California Supreme Court. Among the 16 still-pending environmental cases on the Court's docket are *Lynch v. California Coastal Commission*, raising the issue of whether the Coastal Commission's limits on coastal property owners' ability to erect and maintain seawalls constitute a "regulatory taking" of their property; *Cleveland National Forest Foundation v.*

San Diego Association of Governments, the justices’ first opportunity to interpret and apply SB 375, California’s landmark 2008 legislation designed to reform state transportation and land use policy in order to reduce greenhouse gas emissions; *City of San Jose v. Superior Court*, a redevelopment dispute giving rise to the question of whether local officials’ private email and text messaging accounts constitute “public records” within the meaning of California’s Public Records Act; and several cases raising the issue of whether state and local water charges constitute “taxes” within the meaning of California’s Propositions 218 and 26.

Practicing environmental law before the California Supreme Court is nothing if not interesting and cutting edge.

(Coming this weekend: the most important 2016 environmental law decisions from the U.S. Court of Appeals for the Ninth Circuit.)