The U.S. Supreme Court today signaled that it is seriously considering whether to review an important environmental law case from California–one in which the California Supreme Court previously ruled that California's ban on environmentally-damaging suction dredging in state rivers is not preempted by federal law.


Suction Dredge on the Klamath River

The case is *People v. Rinehart*, U.S. Supreme Court No. 16-970. Last summer, the California Supreme Court unanimously rejected a novel defense raised by the defendant in a criminal environmental enforcement prosecution: that the federal Mining Act of 1872 preempts state law under which the defendant was convicted of illegal suction dredging in a Northern California river located within a national forest. (Suction dredging, a mining technique used by commercial and amateur miners to extract precious metals from waterways, is currently banned in California because of the often-profound damage it inflicts on river ecosystems.) Miner Rinehart argued that federal law–most prominently the Mining Act–preempts the state suction dredging ban because he was mining within the boundaries of a national forest. The state ban, he unsuccessfully argued, can't be enforced on federal lands.

Rinehart, represented by the Pacific Legal Foundation, has petitioned the U.S. Supreme Court to review his case and reverse his conviction under California law. In today's order, the Supreme Court "invited" the views of the Trump Administration's acting Solicitor General as to whether Rinehart's petition for certiorari should be granted. (While styled as an invitation, such an order is traditionally and understandably viewed by U.S. Justice

Department attorneys as a directive from the justices, rather than an option.)

While not a guarantee that the Supreme Court will grant review, the Court's order is significant because it reveals that the *Rinehart* case is, at a minimum, on the justices' "A" list, and that at least some of them believe the case is potentially "cert-worthy."

Legal Planet colleagues Sean Hecht, Eric Biber and I have all previously blogged about the details and significance of the California Supreme Court's 2016 *Rinehart* decision. But now the ultimate fate of that important preemption/federalism decision is in question.

There's a most interesting subplot to the *Rinehart* case now that it's before the U.S. Supreme Court: the Obama Justice Department surprised some observers when in 2015 it filed a friend-of-the-court brief with the California Supreme Court arguing for the proposition that California's suction dredging ban is *not* preempted by federal law and can be enforced even within national forests. It's rare for the federal government to appear as *amicus* in state court cases to argue *against* federal preemption, and the Justice Department's arguments likely were quite influential before the California Supreme Court. So it will be most interesting to see whether the Trump Administration's Justice Department will adhere to that position in the U.S. Supreme Court or, instead, switches sides and argue before the High Court that California's suction dredging ban should be (pardon the expression) "trumped" by federal law.

That decision, in turn, will reveal a great deal about President Trump's professed affection for "states' rights": is that a consistent principle underlying the Trump Administration, or does it only apply when states seek to weaken, rather than strengthen, environmental laws?