Last week the US Supreme Court brought closure to two cases we have been following here at Legal Planet.

First is a case I had blogged about in the past – People for the Ethical Treatment of Property Owners v. U.S. Fish and Wildlife Service – a challenge to the constitutionality of the federal Endangered Species Act as applied to protection of habitat for species present only in one state. I had noted the risks that this case might pose to protections for endangered species in the United States. (The case also gets props for having one of the cooler plaintiff's names out there.) The Tenth Circuit had ruled for the government, rejecting the challenges to the constitutionality of the ESA. And now the US Supreme Court has denied PETPO's request for review of the case.

This outcome is a big deal because the Tenth Circuit was one of the last circuits that both has a substantial number of species listed for protection under the ESA and had not ruled on the constitutional challenges raised by the plaintiffs. Other circuits (such as the DC Circuit, Ninth Circuit, Fifth Circuit, Eleventh Circuit, and Fourth Circuit) have rejected those claims as well. The best vehicle for property rights groups (such as Pacific Legal Foundation, which represented PEPTO in this case) to get the Supreme Court to consider their constitutional arguments was to create a circuit split on the issue. That effort took a major blow. At this point, challenges to the ESA will require finding another circuit with another plausible case (hard, though not impossible), or getting one of the circuits that have heard these cases to reconsider their position (again not impossible, but not easy).

(Disclosure: I was a signatory to an amicus brief in the case before the Tenth Circuit defending the constitutionality of the ESA.)

Second is a case that Rick Frank, Sean Hecht and I have all blogged about – People v. Rinehart – a challenge to a California law that temporarily prohibited certain mining techniques in streams and rivers. Rinehart, who was prosecuted for violating the state law, argued that it was preempted by federal mining law – Rinehart had been arrested when he was mining on federal lands. The case raised important questions about the extent to which state environmental law can set higher standards for activities on federal lands than federal law does. The California Supreme Court (overruling a state court of appeal) concluded that state law could apply in this context. Rinehart sought US Supreme Court review. As Rick noted, the Supreme Court asked the US Solicitor General for his opinion on whether review should be granted, indicating the Court's interest in the case. Perhaps surprisingly, the Trump Administration indicated that it opposed Supreme Court review in this case – and the Supreme Court last week refused to take the case.

That does not mean that the issues at play in Rinehart are over. There is another case in Oregon with similar facts that is currently on appeal before the Ninth Circuit. That case, I think, is more likely to draw Supreme Court attention. Given that the Court was already interested in Rinehart, I think the odds are better that the Court might grant review in that case, no matter the outcome before the Ninth Circuit.

And of course, given current disputes between the Trump Administration and states such as California over energy and mineral development on federal lands, the issues at play in Rinehart are all the more important right now.

(Disclosure: Together with two students here at Berkeley and Sean Hecht, I helped draft an amicus brief for environmental law professors in this case at the California Supreme Court.)