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State Control of Mining on Federal Land: Environmental or Land Use Regulation

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STATE CONTROL OF MINING ON FEDERAL LAND: ENVIRONMENTAL OR LAND USE REGULATION?

What appeared to be a major case in the field of state control over federal lands is, in fact, less than revolutionary. One traditional preemption test was applied, leaving the unanswered question: What distinguishes environmental regulation from land use planning in the eyes of the Supreme Court?

FACTS

In *California Coastal Commission v. Granite Rock Company*[1] the United States Supreme Court upheld a state agency's right to regulate mining activities on federal lands. The state right of regulation issue arose when the Granite Rock Company sought to develop an unpatented[2] mining claim in the Los Padres National Forest[3] in California. In 1981, as required by Forest Service regulations, Granite Rock submitted a Plan of Operations[4] to the District Ranger covering the period from 1981 to 1986. The Forest Service provisionally approved Granite Rock's Plan of Operations: the proviso being that Granite Rock obtain any necessary permits required by the state and county.

The California Coastal Commission was aware that the Forest Service usually required mining operations on Forest Service land to comply with state environmental regulations. Therefore, the Commission advised Granite Rock that a state permit from the Commission would be required in addition to any federal permits. The Commission asserted that the California Coastal Act [CCA][5] empowered it to regulate mining operations on federal land within the Coastal Zone.[6]

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1. 107 S. Ct. 1419.

2. In general, the owner of an unpatented mining claim enjoys the right of possession and enjoyment, including mineral reclamation. 30 U.S.C. § 28 (1982). If the claim is patented through compliance with the conditions set forth in 30 U.S.C. § 29 (1982), title is passed to the patentor.

3. Granite Rock's claim is located in the Big Sur area of the California coast.

4. Subject to certain exceptions, a notice of intention to operate is required from any person proposing to conduct operations in a National Forest that might cause disturbance of surface resources. If the District Ranger determines that such operation will likely cause significant disturbances of surface resources, the operator "shall" submit a proposed Plan of Operations to the District Ranger. 36 C.F.R. § 228.4 (1987).

5. The California Coastal Act, Cal. Pub. Res. Code Ann. §§ 30,000–30,900 (1986) was promulgated in order to receive federal funds under the Coastal Zone Management Act, 16 U.S.C. §§ 1451–1464 (1982). The Coastal Zone Management Act was designed to encourage states to develop comprehensive plans to manage coastal zones. If the proper procedures are followed, including state legislation setting up a regulatory agency to oversee management of the coastal areas, states receive federal funds.

6. The Coastal Zone is defined in the Coastal Zone Management Act at §§ 1451–1454.

Granite Rock contested the Commission's right to regulate on any basis.[7] In the Federal District Court for the Northern District of California, Granite Rock sought to enjoin the Commission from requiring either a coastal development permit under the CCA,[8] or a consistency review under the Coastal Zone Management Act [CZMA].[9] Granite Rock argued that the CCA did not apply, and that hardrock mining claims were exempted from the Coastal Zone.

The district court dismissed Granite Rock's action,[10] finding that hardrock mining areas were not exempted from the Coastal Zone.[11] The district court also determined the National Forest was not a federal enclave[12] subject exclusively to federal regulation. Finally, the district court determined that the state's right to regulate through a permit process was not preempted by federal law.[13]

The Ninth Circuit Court of Appeals reversed[14] on the federal preemption issue. The Ninth Circuit found that the CZMA was not intended to change the status quo of state and federal power over lands within the Coastal Zone.[15] The court concluded that the power to control mining activities of Forest Service land continued to lie with the Forest Service, thereby preempting the requirement of an independent state permit.[16]

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7. By contesting the Commission's right to regulate on any basis, Granite Rock presented a facial challenge to the Commission's regulation. In order for the Commission to defeat the facial challenge, it was sufficient for it to come up with any set of permit requirements that would not be preempted by federal law. Had Granite Rock waited until the Commission issued its permit requirements, the controversy would have been decided on narrower grounds, specific to the particular permit.

8. See note 5.

9. Under the consistency review provisions of the CZMA, once a state coastal zone management program has been approved for federal funds, any applicant for a federal license or permit required to conduct an activity affecting land or water uses in the coastal zone shall certify that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the state program. 16 U.S.C. § 1456(c)(3)(A) (1982).

10. 590 F. Supp. 1361 (1984).

11. Section 1453(1) excludes from the Coastal Zone two categories of land: lands subject solely to the discretion of the federal government and land held in trust by the federal government. The District Court found that "if the 'sole discretion' language of § 1453(1) is not to be stripped of meaning, plaintiff's mining activity cannot be found to fall within its scope." Id. at 1370.

12. Article I, § 8, cl. 17 of the United States Constitution defines federal enclave as "all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-yards, and other needful Buildings."

13. The court examined the Mining Act of 1872, 30 U.S.C. §§ 22–48 (1982), and Forest Service Regulations related to mining.

14. 768 F.2d 1077 (1985).

15. The court stated: "the legislative history and certain provisions of the CZMA conclusively demonstrate that Congress intended the CZMA not to change the status quo with respect to the allocation of state and federal power over lands within the coastal zone." Id. at 1081 (emphasis original).

16. "Forest Service regulations mandate that the power to prohibit the initiation or continuation of mining in national forests for failure to abide by applicable environmental requirements lies with the Forest Service. 36 C.F.R. §§ 228.4–228.5 (1984)." Id. at 1083.

HOLDING

By a 5 to 4 vote,[17] the United States Supreme Court reversed the Ninth Circuit decision. The Court found neither the Property Clause of the U.S. Constitution,[18] Forest Service Regulations,[19] nor federal statutes[20] preempt the Commission's permit requirement for development of an unpatented mining claim on National Forest land.

The Court examined three federal acts in its preemption analysis: the Federal Land Policy and Management Act [FLPMA],[21] the National Forest Management Act [NFMA][22] and the Coastal Zone Management Act. The Court found that neither the FLPMA or NFMA demonstrated a legislative intent to limit states to a purely advisory role in federal land management decisions.[23] Additionally, the Court determined that the CZMA, in excluding federal lands from its definition of the Coastal Zone, did not automatically preempt state regulation of federal lands because the CZMA specifically disclaims any intention to preempt preexisting state authority in the Act itself.[24]

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17. Justices Powell and Stevens concurred with the majority on jurisdictional issues but dissented as to the remainder of the opinion, saying that the majority mis-characterized the governing statutes and that the property clause demands that "federal authority must control with respect to land 'belonging to the United States.'" Justices Scalia and White joined in a dissent, stating that the controversy could be resolved on the narrow ground that the CCA permit requirement constitutes a regulation of use of federal land and is therefore pre-empted by federal law.

18. "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ." U.S. Const., art. IV, § 3, cl. 2.

The Court found that the Property Clause of the United States Constitution "itself does not automatically conflict with all state regulation of federal land," quoting Kleppe v. New Mexico, 426 U.S. 529 (1976): "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power *to enact legislation* respecting those lands pursuant to the Property Clause. *And when Congress so acts*, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause." (emphasis original).

19. The Court examined the Forest Service regulations contained within 36 C.F.R. § 228 (1986) concerning requirements that operators within the National Forests comply with state standards for air and water quality and solid waste treatment disposal. The Court found these regulations "devoid of any expression of intent to preempt state law. . . ." 107 S. Ct. at 1426.

20. The Court considered the Federal Land Policy and Management Act, see note 22, The National Forest Management Act, see note 21, and the Coastal Zone Management Act (cited in note 5).

21. 90 Stat. 2744 (1976), 43 U.S.C. §§ 1701–1784 (1982).

22. 90 Stat. 2949 (1976), 16 U.S.C. §§ 1600–1614 (1982).

23. The FLPMA directs that land use plans developed by the Secretary of the Interior shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law. The Secretary, to the extent he finds practical, is to keep apprised of state land use plans and to assist in resolving inconsistencies between Federal and non-Federal government plans. 43 U.S.C. § 1712(c)(9) (1982). The NFMA directs the Secretary of Agriculture to develop, maintain and revise, where appropriate, land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning of State and local governments and other federal agencies. 16 U.S.C. § 1604(a) (1982).

24. The Court concluded that "Congress clearly intended the CZMA not to be an independent cause of preemption except in cases of actual conflict" by referring to the language of § 1456(e)(1)

BACKGROUND AND APPLICATION

Preemption

There are three ways a state regulation may be preempted by federal law. First, where Congress intends through legislation to occupy a given field, any state law falling within that field is preempted.[25] Second, even where Congress has not completely occupied a given field, state law is still preempted to the extent that it conflicts with federal law.[26] Finally, where state law obstructs accomplishment of the full purposes and objectives of Congress, it is also preempted.[27]

In preemption analysis, several tests have developed through case law; by choosing a particular test, the Supreme Court, in fact, determines the outcome of a given case. The Court's choice of case law for citation in *Granite Rock* was *Hillsborough County v. Automated Medical Labs*.[28]

In *Hillsborough County*, the Supreme Court examined county ordinances governing blood plasma centers to determine a possible conflict with federal regulations.[29] Automated Medical Labs argued that federal regulations were so comprehensive as to preempt any attempt at county regulation. The Court rejected this argument, holding that a finding of preemption based on comprehensiveness of regulations would be "virtually tantamount to saying that whenever a federal agency decides to step into a field, its regulations will be exclusive."[30] The Court did not examine other cases that have addressed the issue of state permitting requirements alleged to have intruded on federal authority.[31]

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of the CZMA and the Senate and Conference Reports on the Act. 107 S. Ct. at 1314 (citing Sen. Rep. No. 753, 92d Cong., 2d Sess., 20 (1972)); H.R. Conf. Rep. No. 1544, 92d Cong., 2d Sess., 14 (1972).

25. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission, 461 U.S. 190, 203)204 (1983); Fidelity Federal Savings and Loan Association v. Del la Cuesta, 458 U.S. 141, 153 (1982); Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

26. Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–143 (1963).

27. Hines v. Davowitz, 312 U.S. 52, 67 (1941); Silkwood v. Kerr-McGee Corp., 464 U.S. 243, 248 (1984).

28. 471 U.S. 707 (1985).

29. Pursuant to § 351(a) of the Public Health Service Act, 58 Stat. 702 (1944), as amended at 42 U.S.C. § 262(a) (1982), the Food and Drug Administration promulgated federal regulations establishing minimum standards for the collection of blood plasma. The regulations established by Hillsborough County sought to apply more restrictive standards.

30. 471 U.S. at 717.

31. In First Iowa Hydro-Electric Cooperative v. Federal Power Commission, 328 U.S. 152 (1946), the Supreme Court held that the Federal Power Act, which establishes a federal permit system authorizing hydroelectric dams, preempted a state law that prohibited such activity unless the petitioner first obtained a state permit. The *First Iowa* Court reasoned that allowing the state to exercise such power would amount to allowing state veto power over a federal project. 328 U.S. at 164. *First Iowa* was relied upon by the Ninth Circuit in deciding *Granite Rock*.

In Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), the Ninth Circuit held the Mineral Lands Leasing Act of 1920, 20 U.S.C. §§ 181–287 (1982), preempted a county zoning ordinance that prohibited oil exploration and extraction activities on county land without a county permit. The Mineral Lands Leasing Act contained provisions specifically addressing the preemption of state law which the Ninth Circuit found determinative.

Environmental v. Land Use Regulation

The distinction between land use and environmental regulation has been significant in marking the boundaries of federal and state powers. Historically, states have been given broad latitude in regulating environmental conditions on federal land.[32] Provisions in the regulations of the Forest Service,[33] Bureau of Land Management,[34] and National Park Service[35] all require consideration of state and local environmental laws, ordinances and regulations in determining a management plan for a given area within their control.

Conversely, states and local governments have not been afforded the same opportunities to determine acceptable uses for federal land. Certainly counties and local municipalities cannot prohibit certain uses, such as mining,[36] oil and gas extraction,[37] or test drilling on unpatented mining claims.[38] Nor can a county regulate federal land use in such a way that is inconsistent with federal law.[39]

ANALYSIS

At the heart of the controversy in *Granite Rock* is the distinction between environmental and land use regulation. This distinction is not easily made. The split in the majority and dissenting opinions in *Granite Rock* was reasoned based on this distinction; the majority deemed the Commission's potential permit requirement environmental, while the dissents found the permit to involve land use planning.

Whether the majority considered the arguments of the dissenters concerning the land use planning/environmental regulation distinction to be critical, is not clear. The majority opinion may have been based on more fundamental philosophical grounds. It is likely that Justice Rehnquist, as a strong supporter of state self-determination,[40] agreed with the majority on the basis of his theory of federalism. Both Justice Brennan[41] and Justice O'Connor[42] have indicated views similar to Rehnquist's on the federalism issue.

32. This is because many federal regulations concerning activities on federal land often require compliance with state and local environmental standards. See note 33.

33. 36 C.F.R. § 228.8(a) (1986) (state air quality standards); 36 C.F.R. § 228.8(b) (1986) (water quality); 36 C.F.R. § 228.8 (1986) (solid waste disposal).

34. 43 U.S.C. §§ 1733(d), 1736–1738, 1740 (1976).

35. 16 U.S.C. §§ 1–150 (1982).

36. Elliot v. Oregon International Mining Co., 654 P.2d 663 (Or. App. 1982).

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

38. Brubaker v. Board of County Commissioners of El Paso County, 652 P.2d 1050 (Colo. 1982).

39. City and County of Denver v. Bergland, 517 F. Supp. 155 (D.Colo. 1981).

40. See David L. Shapiro, Mr. Justice Rehnquist: A Preliminary View, 90 Harv. L. Rev. 293 (1976); Jeff Powell, The Complete Jeffersonian: Justice Rehnquist and Federalism. 91 Yale L. J. 1317 (1982).

41. See Ann Lousin, Justice Brennan: A Tribute to a Federal Judge Who Believes in State's Rights, 20 J. Marshall L. Rev. 1 (1986).

42. See Note, The Emerging Jurisprudence of Justice O'Connor, 52 U. Chi. L. Rev. 391 (1985).

The remaining justices in the majority, Blackmun and Marshall, are more difficult to pin down. Marshall is known as a "liberal" justice.[43] Commentators have noted that Justice Blackmun appears to be moving towards a more "liberal" philosophy concerning individual rights.[44] Although liberal views on individual rights are no indication of liberal views on environmental issues, one explanation of Blackmun and Marshall being present in the majority in *Granite Rock* is a liberal viewpoint on environmental issues in general.

Notwithstanding any underlying reasons for the opinions in *Granite Rock*, the logic cited by both the majority and dissents required a determination of whether the Commission's permit constituted environmental or land use regulation. Case law precedent and federal regulations for implementing environmental statutes suggested that, if environmental, the permit requirement was with a state's ambit,[45] but if land use, the state permit was prohibited.[46] It is probable that had the majority decided the permit requirement constituted a state attempt to control federal land use, the state permit requirement would have been preempted.[47]

In its preemption analysis, the majority classified the permit sought by the Coastal Commission as environmental regulation. By restricting the applicable statutes to those addressing environmental regulation, the Court greatly reduced the scope of its preemption analysis.[48] The majority distinguished between attempts to determine use of federal land and attempts to regulate a given use in an environmentally sensitive manner.[49] For land

43. See Arther A. Galub, The Burger Court 1968–1984, 9 The Supreme Court in American Life Series (1986).

44. See Id. Justice Blackmun wrote for the majority in the controversial 1973 abortion case, Roe v. Wade, 410 U.S. 113 (1973).

45. See note 47.

46. See note 31.

47. See Huron Portland Cement v. Detroit, 362 U.S. 440 (1960) (state smoke emission requirements upheld on federally licensed vessels); Kake Village v. Egan, 369 U.S. 60 (1962) (state conservation laws prohibiting trapping applied in spite of Forest Service permit held allowing fish trapping.)

48. In Fairfax & Cowart, 17 Env. L. Rev. 10276 (cited in note 55), the authors suggest the following statutes may apply to the controversy: Mining Act of 1872, 30 U.S.C. §§ 21–48 (1872); Forest Reserve Act, Ch. 2, 30 Stat. 11 (1897) (codified in various sections of 16, 24, 31, and 44 U.S.C. (1982)); Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181–287 (1982); Common Varieties Act of 1955, 30 U.S.C. §§ 611–615 (1982); National Environmental Policy Act, 42 U.S.C. §§ 4321–4361 (1982); Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528–531 (1982); Endangered Species Act, 16 U.S.C. §§ 1531–1543 (1982); Forest and Rangeland Renewable Resources Act, Title 16 U.S.C. §§ 1600–1614, 1641–1647; Federal Land Policy and Management Act (FLPMA), Title 43 U.S.C. §§ 1701–1782 (1982); National Forest Management Act of 1976 (NFMA), Title 16 U.S.C. §§ 472(a), 476 note, 500, 513, 515, 516, 518, 521b, 528 note, 576b, 581h, 594-2 note, 1600 note, 1600–1614; Wilderness Act of 1964, Title 16 U.S.C. §§ 1131–1136; Wild and Scenic Rivers Act, Title 16 U.S.C. §§ 1271–1287; National Historic Preservation Act of 1980, Title 16 U.S.C. §§ 470–470w–6 (1982); Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1982); Clean Air Act, 42 U.S.C. §§ 7401–7642 (1982); Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1376 (1982); and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6987 (1982).

49. 107 S. Ct. at 1428.

use, the Court applied a preemption standard far tougher than for environmental regulation because existing case law was weighed for preemption of land use controls.[50]

Justice Scalia, in dissenting from *Granite Rock*, found the Commission's permit requirement was land use regulation and hence preempted by federal law. Scalia reasoned that the California Commission was a land use planning body by statute[51] and therefore, the Commission must have been doing land use planning when they sought to require a permit from Granite Rock.

In a separate dissent, Justice Powell points out that the majority opinion rests on a distinction between land use planning and environmental regulation. Powell argues that in the majority's view, the NFMA and FLPMA indicate a congressional intent to preempt state land use regulations, but not state environmental regulations. Powell finds the majority analysis flawed both on the basis of interpretation of the statutes[52] and on the basis of logic.[53]

In any event, the majority, by determining that the permit requirement was environmental regulation, was able to reach a result that would comport with a philosophy of allowing a return to strong state power vis-a-vis the federal government. In addition, state involvement in environmental regulation, which is often more stringent than federal standards, is encouraged. Unfortunately, if encouraging state power was the aim of the Court, it is unclear from the decision in this case, since that rationale is not discussed in the majority opinion. The difficulties of determining the reason the Court chose to write an opinion in the *Granite Rock* controversy illustrate the danger of narrowing the issue in order to reach a desired result: the point sought to be clarified may not be made clearer or may not even be apparent.[54]

50. The "tougher standard" is related to dominion and control of the land in question. Land use planning is often an all-or-nothing proposition; either a mine can be operated (with all the attendant consequences), or it cannot. Conversely, allowing a state or county to limit the emissions or pollutants is control to a much smaller degree. See notes 36 thru 39.

51. The CCA was promulgated in compliance with the Coastal Zone Management Act (see note 9). The CZMA requires that state programs such as the CCA include "[a] definition of what shall constitute permissible land uses and water uses within the coastal zone," 16 U.S.C. § 1454(b)(2), and "[a]n identification of the means by which the state proposes to exert control over [those] land uses and water uses." § 1454(b)(4).

52. The majority cites § 202(c)(8) of the Federal Land Policy and Management Act for the proposition that Congress has understood land use planning and environmental regulation to be distinct activities. 107 S. Ct. at 1435. Section 202(c)(8) requires the Secretary of the Interior's land use plans to "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans." 43 U.S.C. § 1712(c)(8).

53. Justice Powell suggests that "common sense suggests that it would be best for one expert federal agency . . . to consider all . . . factors and decide what use best furthers the relevant federal policies." 107 S. Ct. at 1436.

54. For a criticism of the *Granite Rock* decision on this point, see Sally Fairfax & Richard Cowart, Judicial Nationalism v. Dual Regulation on Public Lands: *Granite Rock's* Uneasy Compromises, 17 Env. L. Rev. 10276 (1987).

Addressing the issue presented in the two dissents: Is there a logical basis for distinguishing between land use planning and environmental regulation? Authorities agree that environmental regulation is a facet of land use planning and that land use planning is a method of regulating environmental impacts.[55] Although land use planning doesn't necessarily require environmental regulation, it determines, to some extent, environmental conditions. By the same token, environmental regulation may not determine land use but in most instances environmental regulation will determine the specifics of a particular land use.

Given the complexities of separating environmental regulation and land use planning,[56] a less arbitrary approach would be to apply a rule of law consistently to both. This would allow private individuals, companies, states and federal regulatory agencies to plan their actions and respond appropriately to others' actions without resorting to a court declaration. The result would be a more efficient and uniform system for dealing with land use planning and the environment on federal lands.[57]

A comprehensive law that outlines the national policy with respect to federal land and which is binding on all federal agencies has been suggested.[58] As tempting as this suggestion is, it would be a difficult task. Comprehensive federal policy legislation, being the product of compromise, often pleases no one and makes an area less defined.[59] In the absence of such a comprehensive statute, regulators at both the state and federal level, as well as private individuals, will have to wait for the next Supreme Court case on the issue before their options are clear.

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55. "The subject of land use planning is inseparable from the subject of land use control. In a sense, all environmental controls whether intended to regulate pollution or channel development into beneficial directions are ultimately land use controls. By the same token, every effort to control land use has environmental consequences and impact." Frank P. Grad, Environmental Law Treatise § 10.01[1] (1987). See also, Stephen Sussna, Remedying Hazardous Waste Facility Siting Maladies by Considering Zoning and Other Devices, 16 Urban L. 29 (1984).

56. Compare Justice Scalia's statement in his dissent from *Granite Rock*, 107 S. Ct. at 1439, ("The [CCA] is plainly a land use statute.") with the treatment of the controversy as an environmental regulation problem.

57. Application of a uniform set of rules on federal land, even if these rules included compliance with all applicable state standards, would allow planning bodies, regulators and private citizens to know, before an enterprise was begun, what rules would apply. The costs avoided by pre-planning and reducing the legal costs incurred by testing every factual situation in the courts would be significant.

58. See note 53.

59. John C. Miller, Recordation and Surface Management Regulations Affecting Mining in the National Forests, the National Park System and on the Public Domain, 23 Rocky Mtn. Min. L. Inst. 841 (1977) (indicating mining industry dissatisfaction with several "comprehensive" federal natural resource management enactments); Frank P. Grad, Environmental Law Treatise at § 12.03[2](b)(ii) (cited in note 56) ("The Mining and Minerals Policy Act of 1970 . . . is probably more significant for its omissions than for its content.").

CONCLUSION

California Coastal Commission v. Granite Rock Co. appears to be a dramatic departure from past decisions concerning state regulation of activities on federal land. In applying its preemption analysis, the Court narrowed the issue by deciding the Coastal Commission's permit sought to control environmental conditions rather than land use planning. The Court then relied exclusively on statutes and precedents concerned with environmental regulation.

By narrowing the issue, the majority was able to reach a result that furthered the cause of increased state powers in relation to the federal government. The result in *Granite Rock* also favored increased environmental regulation by states. However, a major issue in this case, whether land use planning should be treated differently than environmental regulation, was only addressed by the two dissents.

It is often difficult to distinguish between environmental regulation and land use planning. There may be no reason to do so in the context of state permitting of activities on federal land. A consistent rule, not subject to arbitrary application, which encompasses both land use and environmental regulation by states on federal land would be the fairest and most efficient way to deal with such questions.

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