In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

BRANDON LANCE RINEHART,

Defendant and Appellant.

Case No. S222620

Third Appellate District, Case No. C074662
Plumas County Superior Court, Case No. M1200659
The Honorable Ira Kaufman, Judge

PEOPLE'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

The People's opening brief demonstrated that the text and history of the federal mining statutes show no intent to preempt state environmental regulation unless the state-imposed requirements make it impossible to comply with federal law. That conclusion is strongly buttressed by the rule of construction under which Congress is presumed not to have intended to supplant state law unless it speaks clearly to the issue, and by the views of relevant federal agencies which are given strong weight under *California Coastal Commission v. Granite Rock, Co.* (1987) 480 U.S. 572. California's suction dredge mining statute does not render compliance with federal requirements impossible, and it therefore is not preempted.

Appellant Rinehart's response argues that the presumption against preemption does not apply because his mining claim is on federal land and because mining is a subject of longstanding federal regulation. But federal precedents require a clear statement of congressional intent to preempt state law even as to activities on federal land, and the U.S. Supreme Court has clarified that a presumption against preemption applies wherever there is a long history of state regulation, regardless of the history of federal involvement.

Precedent also requires rejection of Rinehart's argument that Congress's purpose to promote mining implies an intent to override state laws affecting the profitability of his claim. The text and history of 30 U.S.C. § 22 do not support Rinehart's claim of broad-based preemption, and 30 U.S.C. § 612(b) affects only the powers of the federal government, not the states. Federal agencies have endorsed the view that statutes such as California's are not preempted. Those agencies' conclusions remain highly relevant, not only because *Granite Rock* considers agency views critical to mining-law preemption questions, but also because the agencies' special knowledge and experience gives them special insight into what

kinds of state laws would, as a practical matter, frustrate congressional goals. Additionally, Rinehart's reliance on out-of-jurisdiction cases upholding preemption claims fails, because those cases largely predated and are superseded by *Granite Rock*, and the one post-*Granite Rock* case suffers numerous analytical flaws.

Those observations render Rinehart's factual allegations about California's legislation irrelevant, since Rinehart concedes that it would not be impossible for him to comply with both state and federal law. But even if a broader view of obstacle preemption were at issue, Rinehart's claim would fail. Rinehart's mischaracterizations notwithstanding, California's statute is a reasonable environmental regulation, which is neither unprecedented nor designed to be permanent. The statute, by its own terms, is not a prohibition but is rather a delay in permitting based on suction dredge mining's environmental effects and set to expire when those effects are addressed. Under *Granite Rock*, it is permissible. The Court of Appeal's "commercial impracticability" standard for preemption remains ill-suited to judicial application, and Rinehart's argument for this Court to expand the Court of Appeal's relief by entering judgment in his favor is meritless.

Because Rinehart has no viable preemption defense, the Court should affirm the trial court's conviction.

ARGUMENT

I. CONGRESS INTENDED FEDERAL MINING LAW TO PREEMPT ONLY THOSE STATE LAWS WHICH WOULD MAKE IT IMPOSSIBLE TO COMPLY WITH FEDERAL LAW

A party seeking preemption has the burden to prove that Congress intended to preempt the state law. (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 936.) Rinehart fails to meet this burden.

A. The Presumption Against Preemption Applies to the Existence and Scope of Rinehart's Preemption Claim

"In all pre-emption cases, and particularly in those in which Congress has legislated ... in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." (*People ex rel. Harris v. Pac Anchor Transp., Inc.* (2014) 59 Cal.4th 772, 778, internal quotation marks omitted and quoting *Brown v. Mortensen* (2011) 51 Cal.4th 1052, 1060.) This is a "cornerstone[]" of preemption analysis. (*Pac Anchor*, *supra*, 59 Cal.4th at p. 778, internal quotation marks omitted.) The presumption is "strong," and "applies not only to the existence, but also to the extent, of federal preemption." (*Brown*, *supra*, 51 Cal.4th at p. 1064.) If two readings of a federal statute are plausible, courts must "accept the reading that disfavors pre-emption." (*Bates v. Dow Agrosciences LLC* (2005) 544 U.S. 431, 449.) Under *Brown* and *Bates*, because the Mining Act of 1872 can be read as preempting only state environmental laws that would make it impossible to comply with federal mandates (see Opening Brief 11-20), this Court must presume that that is the full extent of preemption that Congress intended.

Rinehart does not dispute that California's regulation to protect fish and wildlife and preserve water quality and the environment concern "field[s] which the States have traditionally occupied." (*Pac Anchor Transp.*, *supra*, 59 Cal.4th at p. 778, internal quotation marks omitted.) Nor does Rinehart dispute that California has acted in these fields since the Nineteenth Century, even when the state regulation affects mining. (Opening Brief, p. 22.) Instead, Rinehart argues that the presumption does not apply for two reasons.

First, Rinehart suggests the presumption cannot apply because his activity occurred on federal land. (Rinehart Brief, p. 19.) But the

presumption does, in fact, apply on federal land. (See *Wyoming v. United States* (10th Cir. 2002) 279 F.3d 1214, 1231 [no preemption of "Wyoming's historical police powers to manage wildlife on federal lands within its borders 'unless that was the clear and manifest purpose of Congress'"]; *United States v. Calif. State Water Resources Control Bd.* (9th Cir. 1982) 694 F.2d 1171, 1172 fn. 1, 1174-76 [applying the presumption against preemption in case regarding reclamation project on federal land controlled by the Department of Interior; analyzing Congress's powers under the Property Clause].)

Second, Rinehart claims that under *United States v. Locke* (2000) 529 U.S. 89, 108, the presumption does not apply when "'the State regulates in an area where there has been a history of significant federal presence.'" (Rinehart Brief, p. 21 [also citing *Wachovia Bank, N.A. v. Watters* (6th Cir. 2005) 431 F.3d 556].) But the U.S. Supreme Court has more recently clarified that application of the presumption depends upon the "historic presence of state law," not on "the absence of federal regulation." (*Wyeth v. Levine* (2009) 555 U.S. 555, 565 fn. 3; see *In re Countrywide Financial Corp. Mortgage-Backed Securities Litigation* (C.D. Cal. 2013) 966 F.Supp.2d 1018, 1025 fn. 5 [explaining that *Wyeth* "clarified" *Locke*].) Thus, *Wyeth* requires application of the presumption where there is a long history of state regulation, even in areas which also feature longstanding federal regulation. (See *McDaniel v. Wells Fargo Investments, LLC* (9th Cir. 2013) 717 F.3d 668, 675 [securities regulation]; *Pacific Merchant Shipping Assn. v. Goldstene* (9th Cir. 2011) 639 F.3d 1154, 1167 [maritime commerce]; see also *In re Cipro Cases I & II* (2015) 61 Cal.4th 116, __ [2015 WL 2125291, *24] [antitrust].) In light of California's long history of regulating environmentally destructive mining practices (see Opening Brief pp. 4 fn. 3, 17-18, 22), the presumption against preemption applies in this case.

B. The Mining Act of 1872 Does Not Preempt California's Law

Rinehart argues that, instead of applying the presumption against preemption, this Court should infer a wide-ranging preemptive scope for federal mining law. Rinehart does not contradict the People's account of the legislative history behind the Mining Act of 1872, the main purpose of which was to remove trespassing restrictions and allow citizens onto federal land. (See Opening Brief, pp. 12-13.) Although the People demonstrated that Congress intended to preserve state authority over unpatented mining claims (*id.* pp. 13-17), Rinehart calls such arguments "sophistry," and instead makes general assertions about the mining law's purpose, which he supports by scattered textual references. (Rinehart Brief, pp. 36-39.)

1. Congress's General Intent To Promote Mining Does Not Establish Preemption

Rinehart first argues that the Mining Act of 1872 was intended to promote mining, and that Congress's purpose is therefore frustrated by state regulation that makes any mining more difficult or less profitable. (Rinehart Brief, pp. 36-38.) Obviously, one of Congress's purposes was to promote mining. (Opening Brief, p. 2.) But Congress's general intent to promote an activity does not prove congressional intent to preempt state regulation that may inhibit that activity. (*Commonwealth Edison Co. v. Montana* (1981) 453 U.S. 609, 633-34; *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Com.* (1983) 461 U.S. 190, 221-23.) Although Rinehart attempts to distinguish these cases by claiming that they considered only the preemptive effect of "vague and general statutory purpose clauses" (Rinehart Brief, pp. 31-32), the congressional purposes in those statutes were no more general than Rinehart's claimed purpose for the mining laws, to "get the minerals out of the ground." (Rinehart Brief, p. 30.) *Commonwealth Edison* reasoned that although

federal statutes evinced a purpose of "encouraging the use of coal," "[w]e do not ... accept appellants' ... suggestion that these general statements demonstrate a congressional intent to pre-empt all state legislation that may have an adverse impact on the use of coal." (453 U.S. at p. 633.) Rinehart's argument is essentially the same as what the Supreme Court found wanting in *Commonwealth Edison*, and should be similarly rejected.

Rinehart is also wrong to portray federal mining law as focused single-mindedly on resource extraction. "[N]o legislation pursues its purposes at all costs." (*Rodriguez v. United States* (1987) 480 U.S. 522, 525-26.) Federal mining law is intended to "assure satisfaction of industrial, security, *and environmental needs*." (30 U.S.C. § 21a, emphasis added.) Indeed, as the Idaho Supreme Court noted in a pre-*Granite Rock* case finding no preemption of a dredge mining permit requirement, Congress often depends on state regulation to further environmental goals. (*Idaho ex rel. Andrus v. Click* (1976) 97 Idaho 791, 799 [554 P.2d 969, 977] [quoting 42 U.S.C. § 4331(a) (noting the "continuing policy of the Federal Government, in cooperation with State and local governments, ... to create and maintain conditions under which man and nature can exist in productive harmony") and 42 U.S.C. § 4371(b) (announcing "a national policy for the environment which provides for the enhancement of environmental quality," and stating that "[t]he primary responsibility for implementing this policy rests with State and local governments").]) *Andrus* reasoned that "[t]hese statements ... evidence a concern that development be carried out wherever possible so as to minimize its adverse impact on environmental quality." (*Ibid.*) *Andrus* found Idaho's dredge mining statute to be "in harmony with this goal" where the statute allowed a permit to be withheld if the operation "'would not be in the public interest, giving consideration [to factors including] fish and wildlife habitat.'" (*Id.* at pp. 796, 799.) California's moratorium, which is designed to pause

suction dredge mining until similar protections can be assured, should be similarly upheld.

Rinehart also claims that Congress "grant[ed] specific property rights to specific parcels for mineral development" and that the state cannot "forbid," "impair," or "obstruct" that activity on any such parcel. (Rinehart Brief, pp. 29-31.) But the Supreme Court has upheld state regulations notwithstanding their effects on activities licensed under federal law. (*See Commonwealth Edison*, *supra*, 453 U.S. at p. 629 [coal mining leases under the federal Mineral Lands Leasing Act of 1920]; *Pacific Gas & Elec. Co.*, *supra*, 461 U.S. at pp. 206-07 [nuclear power plants licensed under the federal Atomic Energy Act].) In neither case was congressional encouragement of an activity combined with the grant of a federal privilege enough to preempt state regulation.

Nor has Congress specifically sanctioned suction dredge mining on Rinehart's parcel. In *Viva!* and *Bronco Wine Co. v. Jolly* (2004) 33 Cal.4th 943, the party arguing preemption, like Rinehart, "contended that state law prohibited what federal law authorized." This Court reasoned that "[t]here is a difference between (1) not making an activity unlawful, and (2) making that activity lawful." (*Viva!*, *supra*, 41 Cal.4th at p. 952, internal quotation marks and ellipses omitted and quoting *Bronco Wine*, *supra*, 33 Cal.4th at p. 992.) Here, as in *Bronco Wine* and *Viva!*, "'it is more accurate to characterize the state statute as prohibiting ... what the federal [regulation] *does not prohibit*.'" (*Ibid.*, emphasis in original.) Under *Bronco Wine* and *Viva!*, that type of prohibition poses no conflict and does not result in preemption.

Rinehart argues that the federal mining laws "struck the balance between protecting the natural environment and extracting the minerals" (Rinehart Brief, pp. 3-4), and that California cannot alter that balance by imposing additional requirements. But that argument does not survive

Granite Rock. The dissenting justices in that case argued that Congress could not have intended a system where "state regulators, whose views on environmental and mining policy may conflict with the views of the Forest Service, have the power, with respect to federal lands, to forbid [mining] activity expressly authorized by the Forest Service." (480 U.S. at p. 606 [conc. & dis. opn. of Powell, J.].) But the majority in *Granite Rock* directly rejected this view, requiring an "actual conflict between state and federal law." (480 U.S. at pp. 593-94.) The U.S. Supreme Court's rejection of that argument there should lead this Court to reject Rinehart's argument here as well.

2. Rinehart's Textual Arguments Fail

The Mining Act of 1872 allows miners to enter federal land to mine "under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States." (30 U.S.C. § 22.) Although Rinehart appears to concede that the phrase "regulations prescribed by law" envisions a role for state statutes (see Opening Brief, pp. 14-17), he argues that California's suction dredge mining statute is "inconsistent with the laws of the United States" because it is an "obstacle[]" to the "full purposes and objectives" of the federal law and its "'liberal spirit.'" (Rinehart Brief, pp. 37-38.) But section 22 requires consistency with federal "laws" – not with more vague notions of federal "spirit," "objective[]," or "purpose[]." As the People have explained, the phrase "not inconsistent with the laws of the United States" effectively codifies what is understood now as conflict preemption, which occurs when it is impossible to comply with both federal law and state law at the same time. (Opening Brief, p. 15 fn. 7; cf. *Pac Anchor Transp.*, *supra*, 59 Cal.4th at p. 778 [using the term "conflict preemption" to discuss scenarios in which it is impossible to comply with both state and federal

law]; *Viva!*, *supra*, 41 Cal.4th at p. 936 [same].) In state-federal relations, where "the Government has provided for collaboration the courts should not find conflict." (*Union Brokerage Co. v. Jensen* (1944) 322 U.S. 202, 209.) Under the presumption against preemption, the non-preemptive interpretation must be given effect. (See *supra* pp. 3-4.)[1]

Rinehart argues that 30 U.S.C. § 26 "sharpens [c]ongressional intent" by explicitly preserving only state laws "'governing ... possessory title.'" (Rinehart Brief, pp. 37-38, emphasis omitted; see 30 U.S.C. § 26 [granting mining claim locators "exclusive right of possession and enjoyment" "so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title"].) But *Granite Rock* gave effect to state permitting laws having nothing to do with title. (480 U.S. at p. 576.) Moreover, there is nothing in section 26 concerning possessory title that would override section 22's requirement that miners comply with "regulations prescribed by law" when mining.

Rinehart's position finds no support from an isolated statement in *Butte City Water Co. v. Baker* (1905) 196 U.S. 119, 125, that, with respect to mining, the state cannot "impos[e] conditions so onerous as to be repugnant to the liberal spirit of the Congressional laws." (Rinehart Brief, p. 38.) That was not a holding of the Court but rather the Court's preliminary quotation (see *Butte City*, *supra*, 196 U.S. at p. 125) of a treatise, which asserted the proposition without citation. (1 Curtis H.

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[1] Section 22's express provision discussing the scope of preemption also creates a rebuttable inference that there is no additional implied preemption. (See *Viva!*, *supra*, 41 Cal.4th at pp. 944-45.) This is consistent with the view that only an express conflict making it impossible to comply with both federal and state law can give rise to preemption in the mining context.

Lindley, Am. Law Relating to Mines & Mineral Lands (1897) § 249, p. 310.) In any event, it cannot bear the weight Rinehart places on it. The legislative history, explained in the People's opening brief and not contradicted by Rinehart, shows that Congress's overriding purpose and motivation for passing what is now codified in section 22 was its intention to remove the trespassing restrictions that would otherwise have barred miners from entering federal land. (Opening Brief, pp. 12-13.) California's law does nothing to hinder or obstruct that purpose. *Butte City* did not involve environmental regulations, but rather the validity of state requirements "concerning the location of mining claims" – that is, requirements for establishing title. (196 U.S. at pp. 122, 127-28.) Even if a similar "liberal" spirit applied to federal requirements concerning matters besides title, the federal statute's intent is protected so long as states do not pass laws that directly conflict. As the People have demonstrated, Congress acted with full awareness that it was preserving a substantial sphere for continued state and local control. (Opening Brief, p. 16 [citing legislative history].) Rinehart points to no contrary indication, and contrary reasoning might require preemption of state laws on dynamite and hydraulic mining, as well as general state laws which happen to affect mining. (See *infra* p. 16; Opening Brief, pp. 37-38.)

3. California's History of Regulating Hydraulic Mining — and Congress's Response — Disprove Rinehart's Claim

The People's opening brief shows that after the Mining Act of 1872 was enacted, Congress was confronted with several cases decided under state law that prohibited hydraulic mining in California; Congress did nothing to overturn these decisions, evidencing an intent to preserve the existence of state law mining regulations and prohibitions. (Opening Brief, pp. 17-19.) Rinehart contends that these cases are irrelevant because they

were tort lawsuits regarding downstream damage from mining on privately held land. (Rinehart Brief, pp. 39-40.) In fact, *Woodruff v. North Bloomfield Gravel Mining Co.* (C.C.D. Cal. 1884) 18 F. 753 concerned California's nuisance statutes, not just common law. (*Id.* at p. 770 [injunction under Civil Code sections 3479, 3480, and 3493].) More importantly, these cases considered and rejected many of the same arguments on which Rinehart relies. They rejected miners' claims that the state laws should yield because "the main objects and purposes of [federal mining law] are to encourage the production of gold." (*County of Sutter v. Nicols* (1908) 152 Cal. 688, 694.) They likewise rejected miners' arguments that Congress's permission to engage in mining-related activity barred the state from prohibiting it. (*Woodruff, supra,* 18 F. at p. 770 [miners argued that federal mining laws "authorized the use of the navigable waters of the Sacramento and Feather rivers for the flow and deposit of mining debris; and having so authorized their use, all the acts of defendants complained of are lawful"]; see generally *id.* at pp. 773-75 [discussing federal mining laws].)

The miners' complaint to Congress (like Rinehart's complaint here) was that, as the result of the application of state law, a particular form of mining was "suppressed." (See People's Request for Judicial Notice, filed March 23, 2015, ("RJN"), Exh. L [Cong. Rec. (House), July 18, 1892, p. 6344, remarks of Rep. Cutting].)[2] Although Congress could have responded by forbidding states from barring particular forms of mining based on environmental destructiveness, it chose not to do so when it

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[2] Rinehart asserts that the hydraulic mining cases regulated only an effect of mining, not the mining activity itself. But downstream debris was an integral part of hydraulic mining (*Woodruff, supra*, 18 F. at p. 756), and miners claimed that the hydraulic decisions had effectively "paralyzed" the industry (RJN, Exh. L, p. 6344).

enacted further mining legislation in 1893. (Opening Brief, pp. 18-19.) In light of this history, Rinehart's attempt to read broad preemption into the federal mining laws cannot be sustained.[3]

C. Section 612(b) Limits Only Federal, Not State, Action

Focusing on a statute the Court of Appeal did not rely on, Rinehart (at pp. 32-36) argues that his claim is supported by two provisions of 30 U.S.C. § 612(b).

The first provision is section 612(b)'s statement that "any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." Rinehart maintains that this imposes a general limitation that "regulation to protect other interests, including environmental interests, may not materially interfere with mineral development." (Rinehart Brief, p. 33.)

This provision, which addresses only "the United States, its permittees or licensees," says nothing about state law. Congress passed this statute out of concern about people who gained control of land by making spurious mining claims when their real goal was to profit from non-mining surface uses such as logging and running filling stations or summer camps. (H. Rept. No. 84-730 (June 6, 1955), p. 6, *reprinted in* 1955 U.S.C.C.A.N. 2474.) The statute, which reserves such surface rights to the United States, was therefore designed to settle rights between miners on the one hand and

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[3] Rinehart asserts that the cases enjoining hydraulic mining "did not involve federal mining claims or federal land." (Rinehart Brief, p. 40 & fn. 11.) But the opinions at issue do not base their reasoning on any such assertion; nor are California's statutory restrictions on hydraulic mining limited to non-federal land. (See Pub. Resources Code, § 3981 [originally enacted by Stats. 1893, ch. 223, p. 337 § 1].)

the federal government and those under federal contract on the other. (30 U.S.C. § 612(a)-(c).) Nothing in the legislative history or elsewhere points to a broader congressional intent. The dispute resolution mechanism in the statute provides for participation by federal departments and agencies, making no mention of state actors. (30 U.S.C. § 613.) Rinehart's reliance on cases such as *United States v. Backlund* (9th Cir. 2012) 689 F.3d 986 (Rinehart Brief, pp. 4, 33-35), which scrutinize federal action under section 612(b), is therefore unhelpful because such cases say nothing about the latitude afforded to states to regulate. It was entirely logical for Congress to make a policy choice that limits federal agencies but leaves states free to make their own choices based on local conditions. (See, e.g., *Center for Competitive Politics v. Harris* (9th Cir. 2015) 784 F.3d 1307, 1318-19 [federal statute prohibiting federal agency from disclosing federal tax return to state governments does not preempt state from requiring the taxpayer to disclose the return to the state directly].) Rinehart's view that congressional limitations on federal power amount to preemption of state power is an argument for preemption-by-implication, which cannot be squared with the presumption against preemption's requirement of a "clear and manifest" intent to preempt. (See *supra* pp. 3-4.)

The second statement in section 612(b) that Rinehart relies on is its proviso that "nothing in this subchapter and sections 601 and 603 of this title shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim." (Rinehart Brief, pp. 35-36.) This provision preserves state priority of water rights between various water users, including federal permit holders such as miners and cattle grazers. It prevents the federal government from taking control of water that states had

allocated to miners, whether or not that water was necessary to the mining operation. (See H. Conf. Rept. No. 84-1096 (July 11, 1955), p. 3, *reprinted in* 1955 U.S.C.C.A.N. 2496 ["this amendment makes clear an intent to leave unaffected the operation of State water laws ... governing the ownership, control, appropriation, use, and distribution of ground or surface waters"].) Rinehart maintains that by this provision Congress "carved out a role only" for state laws pertaining to water rights, leaving states no other ability to affect mining. (Rinehart Brief, p. 35.) But that argument by implication is unpersuasive given the presumption against preemption and 30 U.S.C. § 22's requirement that miners comply with "regulations prescribed by law." Moreover, Rinehart's argument would effectively bar California from any regulation – including not only that allowed in *Granite Rock* but also longstanding seasonal restrictions on mining during sensitive times of the year and restrictions on the use of certain chemicals, which Rinehart elsewhere claims he is not challenging. (Rinehart Brief, pp. 56-57.)

D. This Court Should Follow BLM's View that State Mining Regulations Do Not Obstruct Congress's Purposes Unless they Make it Impossible To Comply with Federal Law

As the People have explained, *Granite Rock* provides further guidance about how to resolve claims of preemption under federal mining law: by looking to federal agency regulations. (Opening Brief, pp. 25-28.)

Rinehart wrongly contends that *Granite Rock* considered only the test for field preemption and not obstacle preemption. (Rinehart Brief, p. 48.) It is true that in *Granite Rock* the plaintiff challenged the very existence of a permit requirement (480 U.S. at p. 580), whereas Rinehart wants to be given a permit. Rinehart is wrong, however, to state that *Granite Rock* ignored obstacle preemption. *Granite Rock* followed an analysis under which the state statute would be preempted not only if Congress had

occupied the field, but also if the state law "'actually conflict[ed] with federal law'" or "'st[ood] as an obstacle to the accomplishment of the full purposes and objectives of Congress.'" (480 U.S. at p. 581.)

Granite Rock provides an answer as to congressional intent, which "'is the ultimate touchstone in every pre-emption case.'" (*Wyeth, supra*, 555 U.S. at p. 565.) *Granite Rock* concluded that the Mining Act of 1872 itself expressed no specific intent "on the as yet rarely contemplated subject of environmental regulation," and that federal preemptive intent should be evaluated by looking to agency regulations. (480 U.S. at p. 582-83; *see ibid.* ["one would expect to find the expression of [preemptive] intent in the[] Forest Service regulations"].)

As the People have shown (Opening Brief, pp. 23-25), the U.S. Bureau of Land Management (BLM), an agency with substantial expertise administering federal mining law, has determined through formal rulemaking that a state environmental regulation applied to mining on federal land "is preempted only to the extent that it specifically conflicts with federal law," which occurs "only when it is impossible to comply with both Federal and State law at the same time." (Mining Claims Under the General Mining Laws; Surface Management, 65 Fed.Reg. 69998, 70008-09 (Nov. 21, 2000).) BLM has further concluded that that standard is not met "if the State law or regulation requires a higher standard of protection for public lands," such as where the state regulation bans one form of mining. (*Ibid.*; 43 C.F.R. § 3809.3; see Opening Brief, pp. 24-25.)

Rinehart claims that BLM's view is irrelevant because his mining claim is in a national forest. (Rinehart Brief, p. 44.) But that contention fails for two reasons.

First, the U.S. Forest Service concurs that the test for preemption is whether the state regulation on mining directly "conflicts" with federal law. (Clarification as to When a Notice of Intent To Operate and/or Plan of

Operation Is Needed for Locatable Mineral Operations on National Forest System Lands, 70 Fed.Reg. 32713, 32722 (June 6, 2005).) This is consistent with Forest Service regulations that require compliance with various state laws. (E.g., 36 C.F.R. §§ 228.5(b), 228.8 [discussed in *Granite Rock*, *supra*, 480 U.S. at pp. 583-84].) Attempting to minimize these regulations' import, Rinehart argues that one regulation's introductory phrase requires miners to "minimize adverse environmental impacts" only "where feasible." (Rinehart Brief, p. 47, quoting 36 C.F.R. § 228.8.) But the Forest Service's specific provisions requiring compliance with state air quality, water quality, and solid waste standards have no such qualifying language. (See *id.* § 228.8(a), (b), (c).) In sum, even if the Forest Service has not explained its views as extensively as BLM has, there is nothing to suggest that the Forest Service views preemption differently than BLM.[4]

Second, BLM has special insight into the question of federal-land-based mining law preemption because of the agency's general authority over mining on federal land nationwide – including mining within national forests. (*See* 43 C.F.R. § 3830.2 ["These [BLM] regulations govern locating, recording, and maintaining mining claims ... on *all* Federal lands." (emphasis added)]; *id.* § 3830.5 [defining "Federal lands" as including national forest land].) Indeed, Rinehart's mining claim at issue here arises from documents he filed with BLM. (Rinehart Brief, pp. 13-14

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[4] Rinehart claims that a single Deputy Regional Forester's decision on one plan of operations says the opposite. (Rinehart Brief, pp. 46-47.) But that decision does not address preemption at all; it amounts merely to a discretionary decision that the state permit requirement would not be explicitly incorporated as a requirement of one particular federal plan of operations. (Rinehart Request for Judicial Notice, Exh. 2.) It certainly does not carry more weight than the Forest Service's formal statement endorsing conflict preemption. (70 Fed.Reg. at p. 32722.)

[discussing Rinehart's filing of Location Notice with BLM, and BLM's "accept[ance]" of the notice and registration of the claim].) BLM applies and interprets the entirety of federal mining law, including the statutes on which Rinehart relies. Given BLM's role administering federal mining law throughout the country, the agency has, under *Wyeth*, "a unique understanding of the statutes [it] administer[s] and an attendant ability to make informed determinations about how state requirements may pose an 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (555 U.S. at p. 577.)

Rinehart's claim that BLM's view misinterprets the federal statute misunderstands Congress's balance of goals in passing the mining law. (See Opening Brief, pp. 11-20 [discussing text and legislative history]; see also *supra* pp. 5-14 [same].) It also fundamentally misunderstands the reason courts look to agency preemption views under *Wyeth*. In concluding that state regulations are not preempted unless they directly conflict with federal requirements, the federal agencies here have not "wipe[d] out two of the three branches of implied preemption law" as Rinehart argues. (Rinehart Brief, pp. 45-46.) Instead, BLM and the Forest Service, applying their "unique understanding" of federal and state mining regimes, have made an "informed determination[]" that state requirements such as California's do not "pose an 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (*Wyeth*, *supra*, 555 U.S. at p. 577.) BLM did so in response to the express urging of the U.S. Supreme Court. (*Granite Rock*, *supra*, 480 U.S. at p. 583; Mining Claims Under the General Mining Laws; Surface Management, 64 Fed.Reg. 6422, 6427 (Feb. 9, 1999) [proposed rule, citing *Granite Rock*].) The agencies have determined that Congress's "'full purposes and objectives'" (*Wyeth*, *supra*, 555 U.S. at p. 577) will still be accomplished if states impose greater levels of protection, or even if states ban one kind of mining that may

render some claims unprofitable.[5] This does not eliminate the principle of obstacle preemption. Rather, it is an informed application of that doctrine, in which the agencies have used their expertise to evaluate whether particular kinds of state regulation will, as a practical matter, frustrate Congress's goals, and have concluded they will not.[6]

E. Precedent Does Not Support Preemption

Rinehart contends that "[e]very reported case addressing state-law-based refusals to issue permits to mine on federal lands has found

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[5] Rinehart claims (Rinehart Brief, p. 46 fn. 12) that BLM's acceptance of bans on one form of mining is flawed because BLM "misread" a Montana case, *Seven Up Pete Venture v. Montana* (2005) 327 Mont. 306 [114 P.3d 1009]. In fact, BLM did not purport to interpret the *Seven Up* case, since that litigation occurred after BLM's 2000 rulemaking. But BLM's rulemaking and *Seven Up* did directly consider the same Montana statute, Montana Code section 82-4-390. (See *Seven Up*, *supra*, 327 Mont. at p. 309; 65 Fed.Reg. at p. 70009.) The statute banned a particular method of mining that miners believed was the only economically viable way to mine. (*Seven Up, supra*, 327 Mont. at p. 313.) Whether or not the particular plaintiffs in *Seven Up* had unpatented claims on federal land is irrelevant; BLM's rulemaking concluded that applying the Montana statute to such claims on federal land would not pose an obstacle to congressional goals. That reasoning should lead to a similar conclusion here.

[6] Rinehart, taking issue with BLM's longstanding position that compliance with all applicable state laws is relevant to whether a federal mining claim is "valid," argues that state law is relevant only when issuing a patent. (Rinehart Brief, pp. 29 fn. 9, 55 fn. 16.) But BLM also assumes that the claimant will comply with all applicable state laws when considering a miner's basic plan of operations and when deciding whether to "take affirmative steps to invalidate a claim by filing a mining contest." (*Great Basin Mine Watch* (Dept. of Int. Mineral Mgmt. Serv. Nov. 9, 1998) 146 IBLA 248, 256 [1998 WL 1060687] [citing various decisions].) This reflects the BLM's expectation, from start to finish, that miners will comply with all state laws that do not directly conflict with federal law.

preemption." (Rinehart Brief, p. 22, emphasis omitted.)[7] The decisions Rinehart cites are neither binding nor persuasive on the issues raised here.

Of the cases cited by Rinehart, only *South Dakota Mining Association v. Lawrence County* (8th Cir. 1998) 155 F.3d 1005 postdates *Granite Rock.* (Rinehart Brief, p. 22.) The People have shown that *South Dakota Mining* not only failed to analyze the federal mining laws' text or history, but also failed to consider agency views, the presumption against preemption, or the Supreme Court's warning that an intent to encourage an activity is not the same as an intent to preempt state regulation. (Opening Brief, pp. 34-36.) *South Dakota Mining* therefore has little persuasive power.

Rinehart's other cases all predate *Granite Rock*, and are no longer authoritative. Like *South Dakota Mining,* these cases do not address the federal agencies' views or the presumption against preemption. Most importantly, all of these cases were decided on the theory that the state laws at issue were preempted because Congress encouraged mining activity on federal land by granting a permit for the activity. As discussed above, *Granite Rock* explicitly rejected this theory. (See *supra* pp. 7-8.)[8]

Ventura County v. Gulf Oil Corp. (9th Cir. 1979) 601 F.2d 1080 exemplifies the problems with the precedents on which Rinehart relies. *Ventura County* struck down application of a local permitting requirement, because "[t]he federal Government has authorized a specific use of federal

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[7] Rinehart does not cite or discuss a recent unreported federal case *Pringle v. Oregon* (D. Or. 2014) 2014 WL 795328, which holds that Oregon's prohibition on suction dredge mining is not preempted as a matter of law.

[8] *Elliott v. Oregon International Mining Co.* (1982) 60 Or.App. 474 [654 P.2d 663], *Brubaker v. Board of County Commissioners* (Colo. 1982) 652 P.2d 1050, and *South Dakota Mining* are also distinguishable from this case because they were cases involving local zoning ordinances, not statewide environmental laws focused on mining equipment and methods.

lands, and Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress." (601 F.2d at p. 1084.) The Ninth Circuit cited *Ventura County* and relied on this precise holding when it found preemption in the *Granite Rock* case. (*Granite Rock Co. v. Calif. Coastal Com.* (9th Cir. 1985) 768 F.2d 1077, 1082; see also *Granite Rock*, *supra*, 480 U.S. at p. 611 [dis. opn. of Scalia, J., citing to *Ventura County*].) But the U.S. Supreme Court disagreed and reversed, holding there was *no* preemption because states could regulate mining even if that mining had a federal approval. (See *supra* pp. 7-8.) As a result, "the *Granite Rock* opinion as a whole apparently reduces [*Ventura County*'s] precedential value to nil." (1 George C. Coggins & Robert L. Glicksman, Public Natural Resources Law (2d ed. 2007 & 2015 Supp.) § 5:28.) Similar problems affect *Brubaker*, *supra*, 652 P.2d at pp. 1056-59 and *Skaw v. United States* (Fed. Cir. 1984) 740 F.2d 932, 940, which likewise relied on *Ventura County*'s theory of preemption and are no longer good law. (See 1 Coggins & Glicksman, *supra*, § 5:28 ["Because it preceded *Granite Rock*, and for other reasons, *Skaw* probably has little value as precedent." (footnote omitted)].)

II. EVEN A BROADER VIEW OF OBSTACLE PREEMPTION WOULD NOT RESULT IN PREEMPTION OF CALIFORNIA'S TEMPORARY MORATORIUM

Rinehart has abandoned his prior arguments that California's statute makes it impossible for him to do something federal law requires.[9] Because the People have shown that Congress intended preemption to occur only in cases of such actual impossibility, Rinehart's allegations about the motivation behind California's moratorium are therefore irrelevant. But

[9] (Compare Rinehart Brief, p. 30 ["[i]t certainly is not impossible to comply with § 28 without suction dredging"] with Answer to Petition for Review, p. 26 fn. 13.)

Rinehart's defense would fail even under a broader conception of obstacle preemption once Rinehart's mischaracterizations of California's statute are corrected.

A. California Has Enacted a Reasonable, Temporary Environmental Regulation

Rinehart portrays California's law as a bare refusal to issue required permits. (E.g., Rinehart Brief, p. 1.) In fact, the California Legislature has prohibited suction dredge mining only temporarily, until the moratorium can be lifted based on specific conditions. (See Fish & G. Code, § 5653.1, subd. (b).) As the People have explained (Opening Brief, p. 32), this sort of interim moratorium is a commonplace solution to allow proper consideration and fixing of a problem. (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 337-38 & fns. 31-34.)

Rinehart alleges that the moratorium will be permanent. (Rinehart Brief, pp. 49-50.) But when Rinehart engaged in the criminal conduct for which he was convicted, the moratorium was set to expire in 2016. (Opening Brief, p. 32.) Subsequent changes making the end date contingent on particular findings could not change the statute's character as of the date of Rinehart's offense. (Cf. *People v. Picklesimer* (2010) 48 Cal.4th 330, 342 [statutes are presumed to operate prospectively absent clear indication of contrary intent].)

The current statute continues to specify conditions under which the moratorium will end. The Legislature instructed the Department of Fish and Wildlife to report on any statutory changes needed for the moratorium-lifting conditions to be met – a sign that the Legislature in fact intends to act itself to help achieve a resolution that accommodates both environmental protection and appropriately permitted mining. (See Stats. 2012, ch. 39, § 7.) These provisions would have been meaningless if the

Legislature intended a permanent ban. (See *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22 ["We do not presume that the Legislature performs idle acts...."]; *Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 268 [statutes should be construed to preserve their constitutionality].) Given that the Department's environmental review was completed in 2012, the Department provided the required legislative report in 2013, and there is ongoing trial court litigation challenging the Department findings that are currently delaying the lifting of the moratorium (Rinehart Brief, p. 6 fn. 6; Opening Brief, p. 33 fn. 16), Rinehart falls short of showing that the moratorium will be permanent, or even long-standing. (See *Viva!*, *supra*, 41 Cal.4th at p. 936 [burden is on person claiming preemption]; cf. *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327, 1334 fn. 2 ["Courts must presume the Legislature acted in good faith."].)[10]

Rinehart's claim that this statute is unique in requiring full mitigation of significant environmental effects (Rinehart Brief, p. 10) is legally irrelevant. (See *Ry. Express Agency, Inc. v. New York* (1949) 336 U.S. 106, 110 [legislature need not treat all problems identically]; *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 482 [Legislature may address problems

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[10] Interim amendments to the moratorium do not prove another motive: the current time is well within the window the Legislature originally intended for the resolution of environmental issues and resumption of mining. (See Stats. 2011, ch. 133, § 6 [setting 2016 end for moratorium]; Stats. 2012, ch. 39, § 7 [removing 2016 date, but requiring report with recommendations for "statutory changes or authorizations that, in the determination of the department, are necessary" to meet the requirement to "mitigat[e] . . . all identified significant environmental impacts"].)

piecemeal]).[11] It is also inaccurate: many other statutes impose the same standard.[12]

Rinehart alleges that the statute is an overreaction to negligible environmental concerns. (Rinehart Brief, pp. 6-8.) But the moratorium will last only as long as needed to address "significant" environmental effects (Fish & G. Code, § 5653.1, subd. (b)(4)) – that is, concerns that are "substantial" and not based on speculation (Cal. Code Regs., tit. 14, §§ 15382, 15384). Contrary to Rinehart's portrayal, the Department's environmental impact report made findings about significant problems, such as suction dredge mining's "substantial adverse effect[s]" on seven specific "candidate, sensitive, or special status [bird] species." (Supplemental Request for Judicial Notice, filed concurrently, ("SRJN") Exh. S [pp. 4.3-22 and table 4.3-3 of the draft environmental impact report]; see also SRJN, Exh. R [pp. 4.2-24 to -25 and 4.2-33 to -59, water pollution],

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[11] Rinehart complains (Rinehart Brief, p. 10) that dredging related to "energy or water supply management infrastructure, flood control, or navigational purposes" need not obtain Department suction dredge mining permits. (Fish & G. Code, § 5653.1, subd. (d).) But such larger scale projects are fully regulated through other applicable federal, state, and local permitting regimes, including the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

[12] (See *Envtl. Prot. Information Center v. Calif. Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 513-15 [discussing the "full mitigation" requirement for incidental take permits under the California Endangered Species Act]; see also Fish & G. Code, § 12011, subd. (a)(2) [fines for violations of Fish and Game Code section 5650 must include cost to "fully mitigate all actual damages to fish, plant, bird, or animal life and habitat"]; Gov. Code, § 8670.61.5, subd. (b) [parties responsible for oil spills "shall fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat"]; Water Code, §§ 12314, subd. (c) [Delta flood protection projects must fully mitigate certain environmental effects], 79560.1, subd. (b) [requiring determination as to whether projects funded by Proposition 50 bonds fully mitigate environmental effects].)

Exh. S [pp. 4.3-48 to -49, riparian bird habitat], Exh. T [pp. 4.5-11 to -15, cultural, historical, and unique archeological resources], Exh. U [p. 4.7-9 to -10, noise], Exh. V [final findings].) The Department's findings are the subject of separate civil litigation. (Rinehart Brief, p. 6 fn. 6; Opening Brief, p. 33 fn. 16; see also SRJN, Exh. X [stipulation setting briefing schedule].) If that litigation shows that the Department's findings were a prejudicial abuse of discretion, or that the Department has existing authority to mitigate those effects, then that may result in a prospective lifting of the moratorium. For purposes of this case, however, the Department's findings should be presumed correct. (Evid. Code, § 664; *Faulkner v. California Toll Bridge Auth.* (1953) 40 Cal.2d 317, 330.)[13]

By trivializing these environmental concerns, Rinehart seeks to argue that the moratorium is a state land use statute under *Granite Rock.* (Rinehart Brief, p. 25 ["the People seek to repurpose Rinehart's mining claim into a wilderness preserve"].) As previously explained, such arguments would only be relevant to preemption claims based on federal land use statutes, such as the National Forest Management Act (16 U.S.C. § 1600 et seq.), a statute Rinehart never cites or analyzes. (See Opening Brief, pp. 29-31.) In any case, the "core" characteristic of land use regulation – that it "chooses particular uses for the land" (*Granite Rock,*

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[13] Rinehart argues that, "[i]f permitted to present evidence," he would show that suction dredge mining "had no appreciable adverse environmental effects whatsoever." (Rinehart Br., p. 1.) The argument is forfeited, because Rinehart did not make it in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Nor would the Department's findings of significant, unmitigated environmental effects be subject to review in this criminal case even if Rinehart had preserved the issue. (See *Citizens for Responsible Dev. v. City of W. Hollywood* (1995) 39 Cal.App.4th 490, 505 ["California courts have consistently held that an administrative decision which has not been overturned through administrative mandamus is absolutely immune from collateral attack."].)

supra, 480 U.S. at p. 587) – is lacking, since the statute applies statewide without regard to particular land characteristics. Just as a prohibition on firing guns in public is not the same thing as a zoning law controlling where a shooting range may be situated, a ban on suction dredge mining statewide is not a land-use regulation of the land containing Rinehart's unpatented claim. The moratorium is, on its face, a response to the environmental effects of suction dredge mining and is designed to end when those environmental effects are resolved. (Opening Brief, pp. 31-32.)

Correctly understood, the moratorium is a statutory provision that safeguards the environment by temporarily delaying the issuance of permits until environmental effects are mitigated.[14] The moratorium thus fits into *Granite Rock*'s holding allowing for state permitting requirements. It even fits within Rinehart's admission that California can "regulate his operations." (Rinehart Brief, at p. 1; see also RT, p. 23 [trial counsel's agreement that "under *Granite Rock*" "the State ha[s] the ability to set regulations in how dredging should be done"].) It affects mining as a whole far less than the hydraulic mining restrictions that this and other courts have previously upheld, and cannot be considered to obstruct Congress's intent.

B. This Court Should Reject the Court of Appeal's Unadministrable "Commercial Impracticability" Standard

Rinehart disagrees with the People's observations that the Court of Appeal's "commercial impracticability" preemption test is unadministrable. (Rinehart Brief, p. 56.) But Rinehart has not suggested how a court could administer such a standard given such issues as the fluctuations in the price

[14] (See *Tahoe-Sierra*, *supra*, 535 U.S. at p. 337 fn. 31 [noting the lack of any "persuasive explanation for why moratoria should be treated differently from ordinary permit delays"].)

of gold, the different nature and extent of individual mining operations, and the multiple regulations that apply to mining. (Opening Brief, pp. 38-39.) Indeed, Rinehart cannot even settle on a single formulation for what his proposed preemption test involves; he asserts variously that future cases should assess whether regulations are "'unreasonable,' 'materially interfere,' or render[] mining 'commercially impracticable.'" (Rinehart Brief, p. 57.)

Nor should this Court accept Rinehart's suggestion to save for "[f]uture cases" concerns about whether the Court of Appeal's standard would endanger the enforcement of other vital California laws. (Rinehart Brief, pp. 56-57). The People have listed a variety of laws whose application might render a particular mining claim arguably unprofitable for a particular operator, including not only environmental regulations but also labor and workplace safety laws. (Opening Brief, pp. 37-38.) Rinehart asserts, without evidence, that *some* of these laws address conduct unlikely to occur in suction dredge operations. (Rinehart Brief, pp. 56-57.) But Rinehart offers no explanation for why the "commercial impracticability" test for mining law preemption on federal land, if established in this case, would not also apply to large-scale commercial mines and to mines using deadly chemicals and explosives. In short, Rinehart does nothing to disprove the People's explanation of the serious, harmful consequences that would result from adopting the Court of Appeal's view of the law.[15]

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[15] Rinehart notes that *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 281 found that the California Environmental Quality Act applied to a mining project on federal land. (Rinehart Brief, p. 56) But *Nelson* was not a preemption case and did not apply the "commercial impracticability" test. It thus proves little about how that statute would fare if the Court of Appeal's view here remains the law.

III. RINEHART IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW

Rinehart closes his brief by requesting that this Court go beyond the Court of Appeal's judgment and find the moratorium facially preempted as a matter of law. (Opposition Brief, pp. 51-54.) But Rinehart's untested offer of proof in the trial court cannot establish that the only way to profitably mine his claim is by suction dredge mining. No court has determined that Rinehart's proffered expert testimony even satisfies the requirements of Evidence Code sections 801 and 803, and the People do not concede that suction dredge mining is the only practical way to mine Rinehart's claim. (CT 118-19; RT 33.)[16] Rinehart's argument for enlargement of the relief afforded by the Court of Appeal should be rejected.

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[16] Rinehart (at pp. 52-53) unconvincingly relies on a preliminary ruling in the San Bernardino consolidated civil action. But that ruling relied almost entirely on the now-depublished decision under review here. (Rinehart Request for Judicial Notice, Exh. 6, pp. 9-17.) It also ignored the state's expert testimony that suction dredge mining is not the only way to mine similar claims. (SRJN, Exh. W [expert declaration].)

CONCLUSION

This Court should reverse the decision of the Court of Appeal and affirm the trial court's judgment of conviction.

Dated: June 10, 2015

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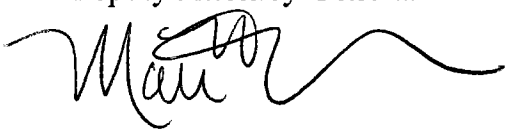

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CERTIFICATE OF COMPLIANCE

I certify that the attached PEOPLE'S REPLY BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 8,259 words.

Dated: June 10, 2015

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Rhinehart**
No.: **S222620**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 11, 2015, I served the attached **PEOPLE'S REPLY BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

Please see attached list.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 11, 2015, at Oakland, California.

Ida Martinac
Declarant

Signature

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People v. Rinehart Supreme Court Case No. S222620

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