No. 16-970

In The
Supreme Court of the United States

BRANDON LANCE RINEHART,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The California Supreme Court

AMICUS CURIAE BRIEF OF AMERICAN EXPLORATION & MINING ASSOCIATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Did the Supreme Court of California err in holding, in conflict with decisions of the Eighth Circuit, Federal Circuit, and Colorado Supreme Court, that the Mining Law of 1872, as amended, does not preempt state bans of mining on federal lands despite being "an obstacle to the accomplishment and execution of the full purposes and objectives" of that law?

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AMICUS CURIAE BRIEF OF AMERICAN EXPLORATION & MINING ASSOCIATION IN SUPPORT OF PETITIONER

Pursuant to Supreme Court Rule 37.3, American Exploration & Mining Association ("AEMA") respectfully submits this amicus curiae brief, on behalf of itself and its members, in support of Petitioner.[1]

IDENTITY AND INTEREST OF AMICUS CURIAE

AEMA, formerly known as Northwest Mining Association, is a nonprofit, nonpartisan national trade association incorporated under the laws of the State of Washington. AEMA represents over 2,100 members of the hardrock mining industry located in 41 states and 10 other countries. AEMA is the leading voice in support of exploration, the junior mining sector, and maintaining access to federal lands. AEMA also represents and informs its members on legislative, regulatory, safety, technical, and environmental issues; educates policy-makers and agency representatives; and promotes economic opportunity and environmentally responsible mining.

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[1] Pursuant to Supreme Court Rule 37.3(a), all parties consent to the filing of this amicus curiae brief. The parties were notified ten days prior to the due date of this brief of the intention to file. Pursuant to Supreme Court Rule 37.6, the undersigned further affirms that no counsel for a party authored this brief in whole or in part, and no person or entity, other than AEMA, its members, or its counsel, made a monetary contribution specifically for the preparation or submission of this brief.

Central to AEMA's mission is advocating for and advancing the mineral resource and mining related interests of its members. Development of hardrock minerals continues to be an important economic driver, contributing $18.8 billion to the United States' gross domestic product in 2016. U.S. Department of the Interior, U.S. Geological Survey, *Mineral Commodity Summaries 2017*, at 5 (2017), *available at* https://minerals.usgs.gov/minerals/pubs/mcs/2017/mcs2017.pdf. AEMA has participated in litigation seeking to protect the use of public lands for hardrock mining and to promote commonsense, non-burdensome agency regulations governing those lands. *See, e.g.*, *Chevron Mining Inc. v. United States*, No. 15-2209 (10th Cir.) (amicus curiae); *Am. Exploration & Mining Ass'n v. EPA*, No. 15-4305 (6th Cir.) (petitioner); *Am. Exploration & Mining Ass'n v. Jewell*, No. 14-17352 (9th Cir.) (appellant); *Bohmker v. State of Oregon*, No. 16-35262 (9th Cir.) (amicus curiae); *Wyoming v. U.S. Dept. of Agric.*, 661 F.3d 1209 (10th Cir. 2011) (amicus curiae); *Topaz Beryllium Co. v. United States*, 649 F.2d 775 (10th Cir. 1981) (intervenor); *Earthworks v. U.S. Dept. of the Interior*, 279 F.R.D. 180 (D.D.C. 2012) (intervenor); *Northwest Min. Ass'n v. Babbitt*, 5 F. Supp. 2d 9 (D.D.C. 1998) (plaintiff). AEMA has a substantial interest in ensuring that, to the maximum extent possible, mineral entry and location remain feasible on all federal lands. To this end, AEMA seeks to ensure that regulatory measures are

not so burdensome as to prevent exploration and mineral development. Accordingly, AEMA respectfully submits this amicus curiae brief in support of Petitioner Brandon Rinehart.

STATEMENT OF THE CASE

In 2009, the State of California adopted a ban on issuance of permits for suction dredge mining within the state. Petitioner's Appendix ("Pet. App.") at A-2. Although styled as a temporary moratorium, in 2012, the state legislature extended the ban until such time as the state agency adopts regulations that fully mitigate any potential environmental impact. Cal. Stats. 2012, ch. 39, § 7 (2012). In 2015, the legislature authorized the state agency to adopt such regulations. Cal. Stats. 2015, ch. 680 (2015). However, no such regulations have been proposed or adopted by the state agency, and the mining ban is effectively permanent until the agency is inspired to act. Pet. App. at A-3.

Rinehart, who owns two mining claims in the Plumas National Forest in northern California, was convicted of violating the state's suction dredge mining ban. Pet. App. at C-2 to C-3. Rinehart's defense was that the state's mining ban was preempted by the 1872 Mining Law ("Mining Law"), 30 U.S.C. § 22 *et seq*. The trial court excluded the evidence of Rinehart's preemption defense. Pet. App. at C-12 to C-13. Rinehart appealed, and the California Court of Appeal reversed, recognizing that an outright ban on mining on federal

lands frustrates the purposes of the Mining Law. Pet. App. at C-23. Accordingly, the Court of Appeal remanded for further fact-finding. Pet. App. at C-24. The California Supreme Court granted certiorari and reversed, treating the mining ban as an environmental regulation. *People v. Rinehart*, 377 P.3d 818, 820-21 (Cal. 2016). The court created a false dichotomy between "exploit[ing]" and "preserv[ing]" natural resources, and went further by equating California's ban on issuance of suction dredge mining permits with any run-of-the-mill state regulation of mining activity. *Id*.; *see also id.* at 825 (framing the issue as whether a "general federal right to mine [is] superior to the exercise of state police powers[ ]"). From there, the court extrapolated that Congress, in passing the Mining Law, did not intend to preempt the state's dominion over its water, fish, and wildlife under the public trust doctrine. *Id.* at 822-23. Rinehart filed his Petition for Writ of Certiorari ("Petition") to resolve the conflict the California Supreme Court's decision created with decisions from the Eighth Circuit, the Federal Circuit, and the Colorado Supreme Court.

SUMMARY OF ARGUMENT

The Mining Law encourages and facilitates the development of the Nation's mineral resources on federal lands. For 150 years, Congress has repeatedly reinforced its policy of incentivizing mining by granting the right to mine to those who are willing to risk their time

and money to explore and develop the Nation's valuable mineral deposits. Although this Court has held that states may permissibly regulate mining on federal lands, it has recognized that an outright ban would be preempted by the Mining Law because it would stand as an obstacle to the purposes of Congress.

In this case, the California Supreme Court improperly treated the mining ban at issue as a mere environmental regulation and characterized Rinehart as seeking immunity from all state regulation. This analysis resulted in the court misinterpreting both the spirit and the letter of the Mining Law, characterizing the Mining Law as preempting only state laws regarding the issuance of patents for federal lands and sidestepping the purposes for which Congress granted those rights in the first place – to encourage and facilitate mining. Finally, the court treated the state's general police powers as paramount, ignoring both the Supremacy Clause of the U.S. Constitution and Congress's powers under the Property Clause. Because the decision below bestows a limitless power on the state to prohibit mining on federal lands and thereby eviscerate the Mining Law, this Court should grant certiorari.

ARGUMENT

I. THE MINING LAW WAS ENACTED TO ENCOURAGE AND FACILITATE THE DEVELOPMENT OF THE NATION'S VALUABLE MINERAL RESOURCES.

For the past 150 years, the United States has had a clear policy of encouraging and facilitating the exploration for, and development of, the Nation's mineral resources on federal lands. In 1866 and 1870, Congress granted a statutory right to mine to prospectors who located lode and placer claims, respectively. *See* 14 Stat. 251 (July 26, 1866); 16 Stat. 217 (July 9, 1870); *see Del Monte Min. & Mill. Co. v. Last Chance Min. & Mill. Co*., 171 U.S. 55, 61 (1898) ("The statute of July 26, 1866 (14 Stat. 251), was the first general statute providing for the conveyance of mines or minerals."). The passage of the Mining Law in 1872 was the culmination of efforts to "combine and fine tune" those laws, *High Country Citizens Alliance v. Clark*, 454 F.3d 1177, 1184 (10th Cir. 2006), as well as to further "encourage individual prospecting, exploration, and development of the public domain." H.R. Rep. No. 84-730 at 3, *reprinted in* 1955 U.S.C.C.A.N. 2474, 2476. The Mining Law accomplished these purposes by extending a unilateral offer granting all U.S. citizens (and those who declare an intent to become a citizen) a statutory right to enter upon federal lands in order to explore for and develop valuable mineral deposits. 30 U.S.C. § 22; *United States v. Locke*, 471 U.S. 84, 86 (1985) (The Mining Law, "still in effect today, allow[s] United States citizens to go onto unappropriated, unreserved public

land to prospect for *and develop certain minerals*." (emphasis added)). A person who satisfies the procedures for "locating" a claim becomes the owner of that claim. *Id.* §§ 22, 23, 26. A mining claim, whether patented or unpatented, is "property in the fullest sense of that term. . . ." *Wilbur v. U.S. ex rel. Krushnic*, 280 U.S. 306, 316 (1930).

The legislative history of the Mining Law also reflects an unambiguous intent to incentivize miners "to go down deeper in the earth, to dig further into the hills, and in every way to improve their own condition" by granting prospectors the right to mine. Cong. Globe, 42nd Cong., 2d Sess., at 534 (1872); Cong. Globe, 38th Cong., 2d Sess., at 686 (1865) ("Men will not lend their capital to mining projects where the title to the soil is in the Government, and cannot be pledged as security."). Whether a mining claim remains unpatented or is eventually patented is irrelevant to the rights granted by the Mining Law, which is focused on discovery of valuable mineral resources. *See Union Oil Co. of California v. Smith*, 249 U.S. 337, 346 (1919) ("[The Mining Law] extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits. . . ."). Indeed, the Mining Law confers rights on prospectors even prior to location for the free use and occupancy of public lands in order to explore for and discover valuable mineral deposits:

> [I]n order to create valid rights or initiate a title as against the United States a discovery of mineral[s] is essential. Nevertheless, [30

> U.S.C. § 22] extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits, and this and the following sections hold out to one who succeeds in making discovery the promise of a full reward. Those who, being qualified, proceed in good faith to make such explorations and enter peaceably upon vacant lands of the United States for that purpose are [treated] . . . as licensees or tenants at will. For since, as a practical matter, exploration must precede the discovery of minerals, and some occupation of the land ordinarily is necessary for adequate and systemic exploration, legal recognition of the pedis possessio of a bona fide and qualified prospector is universally regarded as a necessity. It is held that upon the public domain a miner may hold the place in which he may be working against all others having no better right. . . .

Id. at 346 (internal citations omitted); *see also* 30 U.S.C § 23 (discovery precedes location); *id.* § 27 (granting the owners of tunnel sites the exclusive right to excavate and explore prior to location).

It is undisputed that the Mining Law was a manifestation of Congress's belief that miners must be afforded statutory rights so that they would be willing to invest the necessary time and capital to develop the industry. *See Castle v. Womble*, 119 Pub. Lands Dec. 455, 457 (1894) (providing a common sense definition of "discovery" so that miners would "risk [their] time and capital in the attempt to bring to light and make available the mineral wealth, which lies concealed in

the bowels of the earth, as Congress obviously must have intended" in passing the Mining Law). Despite amendments to the Mining Law, Congress's policy of incentivizing the discovery and development of valuable mineral deposits endures.[2]

Accordingly, the right to mine is *the* essential stick in the bundle of rights that make up a mining claim. *Union Oil*, 249 U.S. at 348-49 (The owner of a mining claim has "an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals, even to exhaustion, without paying any royalty to the United States. . . ."); *Forbes v. Gracey*, 94 U.S. 762, 766-67 (1876) (recognizing that even where "the miner does not have title to the soil, but works the mine[,]" the right "to develop and work the mines, is property in the miner, and property of great value"). Thus, the focus of the Mining Law is facilitating the encouraged activity – mining – rather than a singular preoccupation with the underlying property rights, as the court below suggested. Indeed, a mining claim cannot be located or maintained without an intent to mine. *See* 30 U.S.C. § 612(a); *see also*, *Pacific Coast Molybdenum Co*., 75 IBLA 16, 35 (1983) ("even if a discovery

[2] Nearly 100 years later, Congress reaffirmed the policy reflected in the Mining Law when it passed the Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21 *et seq*. That law provides that "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in . . . the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs. . . ." *Id.* § 21a.

can be shown to exist, proof of bad faith can invalidate a claim"); *United States v. Nogueira*, 403 F.2d 816, 823-25 (9th Cir. 1968).

Because the right to mine is property of great value, it may not be eliminated at the whim of any government. *See United States v. Shumway*, 199 F.3d 1093, 1099-1100 (9th Cir. 1999) ("The Supreme Court has established that a mining 'claim' is not a claim in the ordinary sense of the word – a mere assertion of a right – but rather is a property interest, which is itself real property in every sense. . . ." (citing *Benson Mining & Smelting Co. v. Alta Mining & Smelting Co.*, 145 U.S. 428 (1892)));[3] *United States v. North Amer. Transp. & Trading Co.*, 253 U.S. 330, 331-34 (1920) (The Fifth Amendment's Takings Clause protects unpatented mining claims). The Mining Law grants the right not only to physically occupy a claim, but to mine it – indeed, under the Multiple Use Act of 1955, mining claims *must* be used for "prospecting, mining or processing operations and uses reasonably incident thereto." 30 U.S.C. § 612(a). Therefore, the primary purpose of the Mining Law's grant of rights is to encourage and facilitate mining on federal lands.

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[3] Mining claims may be declared invalid, generally after notice and a hearing, if not properly located. *Cameron v. United States*, 252 U.S. 450, 456-65 (1920). The Mining Law also provides specific procedures whereby an unpatented mining claim may be declared forfeited, which occurs only when mining claimants have failed to properly maintain their claims. *See* 30 U.S.C. § 28(i); 43 U.S.C. § 1744(c); *see also Locke*, 471 U.S.at 93-102.

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE CALIFORNIA SUPREME COURT'S DECISION FRUSTRATES CONGRESS'S PURPOSE IN ENACTING THE MINING LAW.

A. The California Supreme Court Misapprehended The Principal Purpose Of The Mining Law.

In holding that California's suction dredge mining ban was not preempted by the Mining Law, the court below reasoned that Congress did not intend to preempt state laws other than those governing "the delineation of the real property interests of miners vis-à-vis each other and the federal government." *Rinehart*, 377 P.3d at 824-25. The court improperly framed Rinehart's preemption argument as seeking "immunity from regulation" and characterized California's ban as a mere environmental regulation. *Id.* at 823-24, 827. Further, the court relied on the state's role in "protecting the waters and the fish and wildlife within its borders" and applied "a strong presumption against preemption in areas where the state has a firmly established regulatory role." *Id.* at 823. These errors led the court to the conclusion that even an outright ban on mining does not frustrate the purposes of the Mining Law.[4]

[4] Rinehart recognized the state's authority to regulate suction dredge mining, and the Court of Appeal assumed that the state possessed that authority. Petition at 19 n.8; Pet. App. at C-19. Rinehart's preemption argument was based on the proposition

As a preliminary matter, conflict preemption "is compelled whether Congress's command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Because "'the purpose of Congress is the ultimate touchstone in every pre-emption case[,]'" the question of conflict preemption requires examination of the statutory language and legislative history. *Wyeth v. Levine*, 555 U.S. 555, 565-66 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). The fact that the Mining Law contains specific provisions governing the mechanisms by which a mining claim is located, recorded, and patented does not, as the court below suggests, indicate that Congress left it up to the states whether to allow mining on federal lands in the first place. *Compare Rinehart*, 377 P.3d at 824 *with Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 388 (2000) ("[T]he existence of conflict cognizable under the Supremacy Clause does not depend on express congressional recognition that federal and state law may conflict. The State's inference of congressional intent is unwarranted here, therefore, simply because the silence of Congress is ambiguous." (internal citation omitted)).

The lower court's interpretation of the Mining Law is flawed in several respects. First, there is little evidence Congress anticipated that the states would

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that the state's *de facto* ban on placer mining – mining encouraged and facilitated by the Mining Law – goes too far. *See* Answering Brief on the Merits, *People v. Rinehart*, 377 P.3d 818 (Cal., Apr. 22, 2015), 2015 WL 4039103 at *51-52.

attempt to regulate mining on federal lands at all. *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 582 (1987) (The Mining Law expressed "no legislative intent on the as yet rarely contemplated subject of environmental regulation.").[5] Second, the court's interpretation ignores that California bans not only the right to mine – an essential stick in the bundle of rights that make up a mining claim – it effectively voids all placer claims because a mining claimant must have an intent to mine a claim in order to locate or maintain it. *See* 30 U.S.C. § 612(a). Indeed, no placer mining claimant would continue to pay maintenance fees and taxes on a claim without the ability to mine.

Third, the policy reflected in the Mining Law is not one of merely disposing of federal lands, indeed; the Mining Law imbues the owner of a perfected mining claim with substantial rights regardless of whether the claim is ever patented. *See Wilbur*, 280 U.S. at 316-17 (Recognizing that, when a mining claim is "perfected" by discovery of a valuable mineral deposit, the claim "may be sold, transferred, mortgaged, and inherited. . . . The owner is not required to purchase the claim or secure patent from the United States . . . his possessory right, for all practical purposes of ownership, is as good as though secured by patent."); *Freese v. United States*, 639 F.2d 754, 757-58 (Ct. Cl. 1981)

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[5] Furthermore, as Rinehart's Petition fully addresses, later amendments to the Mining Law – as well as other federal statutes – *did* consider federal environmental regulations and made changes to the Mining Law to allow for such regulation. Petition at 8-10.

(Congress's denial of the right to patent before the submission of a patent application and the payment of the purchase price did not constitute a taking). In fact, the statutory right to mine is fully protected upon discovery and location, not by submission of an application for a patent. *Wilbur*, 280 U.S. at 316-17; *see Noyes v. Mantle*, 127 U.S. 348, 351 (1888) (upon the establishment of a valid claim the United States holds fee simple title in trust to be conveyed to the claimant upon application for patent in the prescribed manner); *see also Independence Min. Co. v. Babbitt*, 105 F.3d 502, 509 (9th Cir. 1997) (noting that a miner need not obtain a patent in order to "continue [his] mining operation"). It is apparent from this statutory scheme that Congress was primarily focused on protecting a prospector's investment in, and subsequent development of, mineral resources on federal lands.

Finally, the most obvious evidence that the Mining Law was primarily intended to develop the nation's mineral wealth rather than to dispose of property (as in the preemption and homestead acts) is the fact that mineral lands were reserved from sale. 30 U.S.C. § 21 ("In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law."); *see United States v. Sweet*, 245 U.S. 563, 569 (1918) (explaining genesis of what is now 30 U.S.C. § 21); *Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 48 n.8 (1983) (mineral lands were exempted from the homestead laws, from railroad grants, and from a statute granting land to states for agricultural colleges). Rather, the Mining Law's grant of rights was a means to

an end. That end was opening federal lands to prospecting and encouraging development of the Nation's mineral resources.

B. An Outright Ban On Mining On Federal Lands Frustrates The Purposes Of The Mining Law.

The decision below makes a mockery of the statutory right to mine granted by the Mining Law by essentially concluding that there is no set of facts under which state law would frustrate Congress's core purpose in granting such a right to miners, so long as state law does not alter the "delineation of the real property interests of miners vis-à-vis each other and the federal government." *Rinehart*, 377 P.3d at 824; *cf.*, 30 U.S.C. § 21a. Essentially, the court determined that it was within the state's purview to slam shut the door to federal lands opened by Congress through the Mining Law. This interpretation cannot be squared with *Granite Rock*, where this Court considered the flip side of the issue presented here – whether *all* state regulation of mining is preempted by the Mining Law.

In *Granite Rock*, as here, the State of California relied on its general "police power" to argue that all state regulation of mining activities on Forest Service lands was not preempted. *See* Brief for Appellants, *Granite Rock*, 480 U.S. 572 (June 6, 1986), 1986 WL 727641 at *14-15. There, the state "acknowledged . . . that it may not deny Granite Rock a coastal permit in order to prohibit all mining[]" but insisted that it

sought "merely to ensure that a given mining use in a unique coastal area is carried out in an environmentally sensitive fashion." *Id.* at 15. Because Granite Rock had mounted a facial challenge to the state's requirement that it obtain a mining permit, the issue before this Court was whether "there is no possible set of conditions the Coastal Commission could place on its permits that would conflict with federal law" – *i.e.*, whether "any state permit requirement is *per se* preempted." *Granite Rock*, 480 U.S. at 580. This Court answered that question in the negative, explaining that the Mining Law and applicable Forest Service regulations do not *always* preempt state environmental regulations, and relied on the Coastal Commission's statement that "it does not seek to prohibit mining of the unpatented claim on national forest land" in finding the regulation was not facially unlawful. *Id.* at 586-88 ("Because the California Coastal Commission did "not seek to *prohibit* mining of the unpatented claim on national forest land[,]" merely to "*regulate* a given mining use[,]" such regulation was not preempted by the Mining Law (second emphasis in original)). However, this Court also recognized that a "state environmental regulation" might go so far as to make "a particular land use . . . commercially impracticable[,]" which would be preempted. *Id.* at 587. Essentially, while this Court agreed with the state that Congress did not intend to occupy the field entirely, it warned of conflict preemption if a state regulation went too far.

Here, California reversed its *Granite Rock* position that it may not refuse to issue permits and thereby

prohibit all mining. *But see Marvin M. Brandt Trust v. United States*, 134 S. Ct. 1257, 1265 (2014) ("The Government loses [its] argument today, in large part because it won when it argued the opposite before this Court more than 70 years ago. . . ."). Instead, the state argued that it may impose a ban on permitting commercially practicable forms of mining without running aground of the Mining Law.[6] *See* People's Opening Brief on the Merits *California v. Rinehart*, 377 P.3d 818 (Mar. 23, 2015), 2015 WL 4039102 at *36-39. In doing so, the state ironically analogized to *Granite Rock* and characterized its ban as an environmental protection law. *Id.* at *25-26. The California Supreme Court accepted that characterization without discussion, treating the ban as a mere environmental regulation. *Rinehart*, 377 P.3d at 829-30. The implications of the court's decision are far-reaching. If an outright ban on

[6] Although the issue was never remanded for further fact-finding, the California Court of Appeal recognized that a ban on suction dredge mining would be a *de facto* ban on mining if gold panning was not otherwise commercially practicable. Pet. App. at C-23. The California Supreme Court did not address whether or not the state law was a *de facto* ban but appeared to assume that it was. *Rinehart*, 377 P.3d at 821. For its part, the state argued that whether or not a state law made mining "commercially impracticable" was irrelevant, in direct contravention of *Granite Rock* and *Lawrence County*. *Compare* People's Opening Brief on the Merits *California v. Rinehart*, 377 P.3d 818 (Mar. 23, 2015), 2015 WL 4039102 at *36-37 *with Granite Rock*, 480 U.S. at 587 and *South Dakota Min. Ass'n, Inc. v. Lawrence Cnty.*, 155 F.3d 1005, 1011 (8th Cir. 1998) (Finding determinative the fact that "surface metal mining is the only practical way any of the plaintiffs can actually mine the valuable mineral deposits located on federal land in the area. . . .").

the only commercially practicable form of placer mining does not frustrate the purposes of the Mining Law, then nothing does.

Other cases outside the Mining Law context have recognized that conflict preemption applies whenever a state law frustrates the core purpose of a federal law. *See, e.g.*, *Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976) (Even where "[t]he Federal Government does not assert exclusive jurisdiction over . . . public lands[,]" where state laws conflict with federal legislation, "[t]he state laws must recede."); *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) (conflict preemption applied when state immigration law "would interfere with the careful balance struck by Congress" because Congress already determined that "it would be inappropriate to impose criminal penalties on aliens who seek or engage in unauthorized employment."). Similar to the careful balance struck by Congress in *Arizona*, the Mining Law and subsequent amendments clearly considered environmental regulations and recognized that "the study and development of methods to control mineral waste products and reclamation of mined land are the methods by which Congress chose to deal with the environmental problems created by mining." Matt A. Crapo, *Regulating Hardrock Mining: To What Extent Can the States Regulate Mining on Federal Lands?*, 19 J. Land Resources & Envtl. L. 249, 259 (1999) ("Note that Congress could have chosen to ban mining methods that pose significant or substantial threats to the environment but declined to do so."); 30 U.S.C. § 21a; 30 U.S.C. § 1281; *see also* Petition at 8-10.

At no point has Congress seen fit to *prohibit* mining on federal lands, except for in specific circumstances where withdrawal of federal lands from location and development is warranted. *See* 43 U.S.C. § 1714. Even then, valid existing rights to mine are protected. 43 U.S.C. § 1701, note (h) (making such withdrawals "subject to valid existing rights"); *see Locke*, 471 U.S. at 87 (federal land managers must "proceed slowly and cautiously in taking any action affecting federal land lest the federal property rights of claimants be unlawfully disturbed"). Only mining claims located after the date of the filing of a withdrawal petition are invalid. *See Shiny Rock Min. Corp. v. United States*, 825 F.2d 216, 219 (9th Cir. 1987) (mining claim located on withdrawn lands is void *ab initio*). Allowing states to effectively void mining claims, which this Court has previously determined constitute valuable property interests, *see Wilbur*, 280 U.S. at 316-17; clearly conflicts with the careful balance struck by Congress in order to continue to incentivize mining. California's ban effectively substitutes the state's judgment for Congress's policy determination that it is in the national interest to facilitate development of the Nation's minerals. *See High Country Citizens Alliance*, 454 F.3d at 1183-86 ("'[T]he 1872 Mining Law creates a presumption in favor of mining that is difficult – if not impossible – to overcome . . . it is the Magna Carta of mining on public land. . . .'" (quoting Meyer & Riley, PUBLIC DOMAIN, PRIVATE DOMINION, 56, 78 (1985)). Accordingly, the state's ban is preempted by the Mining Law.

III. CERTIORARI SHOULD BE GRANTED BECAUSE THE CALIFORNIA SUPREME COURT TREATED THE STATE'S POLICE POWERS AS PARAMOUNT, IN VIOLATION OF THE SUPREMACY CLAUSE.

The Supremacy Clause of the U.S. Constitution states, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. The Property Clause gives Congress plenary power over federal lands. *Granite Rock*, 480 U.S. at 581. The court below relied heavily on the state's assertion of broad police powers over federal lands in determining that Rinehart's preemption claim would result in "the overzealous displacement of state law. . . ." *Rinehart*, 377 P.3d at 822-23. Because the State of California has dominion over its fish, wildlife, and navigable waters under the public trust doctrine, the court reasoned, "a strong presumption" against preemption applies. *Id.* at 823.

The California Supreme Court misconstrued Rinehart's preemption argument. Rinehart does not argue that the Mining Law encourages development of the nation's mineral resources at all costs. *Cf.*, *Rinehart*, 377 P.3d at 820 (falsely asserting that Rinehart claimed "a right to mine immunized from exercises of the states' police powers."). The court below treated the preemption question as an all-or-nothing proposition: Either states can ban all commercially practicable forms of mining, or states are powerless to protect their fish, wildlife, and waterways. *Id.* at 820-21. But our

federalist system favors neither of these two extremes, and *Granite Rock* reflects a balance between permissible environmental regulation, on the one hand; and impermissible land use restrictions, on the other. *Granite Rock*, 480 U.S. at 587. *Granite Rock* is not an outlier. In other contexts, this Court has held that Congressional purposes and a state's exercise of police powers that do not conflict with Congress's purposes are compatible. *See, e.g.*, *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 633 (1981) (state severance tax on mineral production was not preempted by federal statutes encouraging the production and use of coal); *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 257-58 (1984) (Congress's intent to promote nuclear power in the Atomic Energy Act did not prohibit the award of punitive damages against a nuclear power company under state tort law). It is simply disingenuous to pretend that states must be allowed to ban mining in order to "exercis[e] their ordinary police powers on federal land[.]" *Rinehart*, 377 P.3d at 824.

This Court has made clear that, whatever "broad trustee and police powers" a state may have, when "state laws conflict with . . . legislation passed pursuant to the Property Clause, . . . [t]he state laws must recede." *Kleppe*, 426 U.S. at 543, 545. Federal law always prevails when a state law conflicts with a valid exercise of federal power. For example, states traditionally have broad police powers over wildlife within their borders. *See Toomer v. Witsell*, 334 U.S. 385, 402 (1948). Nevertheless, federal law precludes the state's exercise of those powers where, for example, a state imposes

prohibitory licensing fees on nonresidents shrimping in its waters in violation of the Privileges and Immunities Clause, *id.*; or a state attempts to ban the use of certain animal traps when the Endangered Species Act permits live trapping of endangered and threatened species for conservation purposes. *Nat'l Audubon Society, Inc. v. Davis*, 307 F.3d 835, 852-53 (9th Cir. 2002). The Mining Law is no different. California's ban on suction dredge mining effectively prohibits any commercially practicable form of placer mining within its borders, and certainly prevents Rinehart from working his claim in a commercially practicable manner. Petition at 12-14. Here, as in other Mining Law cases, preemption is primarily a "'matter[] of statutory interpretation.'" *Colorado Min. Ass'n v. Bd. of Cty. Comm'rs of Summit Cty.*, 199 P.3d 718, 723 (Colo. 2009) (quoting *Town of Carbondale v. GSS Props., LLC*, 169 P.3d 675, 682 (Colo. 2007)). The California Supreme Court abandoned that interpretative role when it elevated the state's police powers above Congress's Property Clause powers.[7] Such analysis was in error. *See Fid. Fed. Sav.*

[7] In an attempt to strengthen the state's interests and apply a presumption against preemption, the court below focused on the fact that the state's role in protecting its fish and wildlife "predat[es] even the federal laws upon which Rinehart relies." *Rinehart*, 377 P.3d at 823 (discussing the history of the public trust doctrine). But the relative timing of a federal law has nothing to do with the question of whether it displaces state law. Additionally, the state's ban on suction dredge mining is of recent vintage and stands in stark contrast to the long history of prospecting in California. *See* Petition at 10. Thus, this is not a situation where this Court applies a presumption against preemption. *Compare Medtronic*, 518 U.S. at 485 ("[W]e 'start with the assumption that the historic police powers of the States were

& Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982) (" 'The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail.' " (quoting *Free v. Bland*, 369 U.S. 663, 666 (1962))).

As discussed above, Congress could have prohibited mining methods that pose significant or substantial threats to the environment, but has repeatedly declined to do so. *See* Crapo, *Regulating Hardrock Mining*, 19 J. Land Resources & Envtl. L. at 259; *United States v. Bd. of Cnty. Comm'rs of Cnty. of Otero*, 843 F.3d 1208, 1215 (10th Cir. 2016) ("When different governments differ in their assessment of danger, one must prevail, and the Supremacy Clause says that in these circumstances it must be the United States."). The state may not ban the very activity which Congress still encourages through granting the right to mine to prospectors. 30 U.S.C. § 22; *see Union Oil*, 249 U.S. at 348-49 (once a prospector "locates, marks, and records" a claim, the claimant has "the right to extract the minerals" on that claim); *Shumway*, 199 F.3d at 1098-99 (The right of an owner of a mining claim "to all the minerals he extracts, has been a powerful engine driving exploration and extraction of valuable minerals, and has been the law of the United States

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not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' " (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947))) *with Granite Rock*, 480 U.S. at 582 (in passing the Mining Law in 1872, Congress did not address the "as yet rarely contemplated subject" of environmental regulation).

since 1866."). Nor may California use a blunt instrument to obliterate the careful balance Congress has sought to achieve. *See* Sam Kalen, *An 1872 Mining Law for the New Millennium*, 71 U. Colo. L. Rev. 343, 353 (2000) (Discussing "specific strategies" implemented by the Department of the Interior to regulate mining – "for example, limiting patents for millsites, adopting more effective surface-use regulations, and segregating or withdrawing sensitive lands from the patenting process" – in order to "modernize its administration of the Mining Law."). Whenever a state law so clearly conflicts with Congress's purposes, it must yield.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

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