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NINTH CIRCUIT HOLDS THAT ENVIRONMENTAL RESTRICTIONS WHICH BAN SPECIFIC MINING METHODS ARE NOT PREEMPTED BY FEDERAL LAW

Bohmker v. Oregon
903 F.3d 1029 (9th Cir. 2018)

November 2018

The Ninth Circuit Court of Appeals recently held that an Oregon state law which prohibited certain in-stream mining methods was a reasonable environmental regulation and thus was not preempted by federal law. The ruling further defines the limits of the federal preemption doctrine, as applied to mining, following the U.S. Supreme Court decision in *California Coastal Comm. v. Granite Rock Co.*, 480 U.S. 572 (1987).

The state law prohibited "motorized in-stream placer mining" below the ordinary high-water line in streams with essential salmon habitat, to protect salmon from the cumulative effects of such mining. Opponents argued its practical effect was to ban suction-dredge mining, which they described as the only practicable method to mine gold from their federal mining claims. They argued that the law prevented them from exercising their mining rights and was therefore preempted under the principles of *Granite Rock* and *South Dakota Mining Assn. v. Lawrence County*, 155 F.3d 1005 (8th Cir. 1998).

The Ninth Circuit began from the premise that federal law uniformly allows local government to impose reasonable environmental regulations to manage the environmental effects of mining. From that premise, the court held that laws which prohibit certain *methods* of mining, but do not ban mining altogether, were not preempted.

In doing so, the court expressly rejected the "commercial impracticability" theory of preemption, under which environmental laws are preempted if they are so restrictive as to render mining commercially impracticable. The court viewed such a theory as unworkable because it would require the preemption analysis to turn on each miner's individual finances and would give the greatest protection to the least profitable operations.

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