

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-1200

TITLE CALIFORNIA COASTAL COMMISSION, ET AL., Appellants V.
GRANITE ROCK COMPANY

PLACE Washington, D. C.

DATE December 2, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

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CALIFORNIA COASTAL COMMISSION, :

ET AL. :

Appellants :

v. : No. 85-1200

GRANITE ROCK COMPANY :

- - - - -x

Washington, D.C.

Tuesday, December 2, 1986

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:00 o'clock a.m.

APPEARANCES:

LINUS MASOUREDIS, ESQ., San Francisco, Calif.;

on behalf of Appellants.

BARBARA R. BANKE, ESQ., San Francisco, Calif.;

on behalf of Appellee.

JEFFREY P. MINEAR, ESQ., Washington, D.C.;

on behalf of the United States as amicus curiae,
supporting Appellee.

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on behalf of Respondent.	
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1 P R O C E E D I N G S

2 CHIEF JUSTICE REHNQUIST: Mr. Masouredis, you
3 may proceed whenever you're ready.

4 ORAL ARGUMENT OF

5 LINUS MASOUREDIS, ESQ.

6 ON BEHALF OF APPELLANTS

7 MR. MASOUREDIS: Thank you, Mr. Chief Justice,
8 may it please the Court.

9 This case is an appeal from a judgment of the
10 Ninth Circuit which held that California's environmental
11 regulation under the California Coastal Act of Granite
12 Rock's limestone mining on federal forest lands was
13 preempted by the Forest Service's surface use
14 regulations and by the 1872 Mining Act.

15 Now, before getting to the facts I'd like to
16 try and summarize the three points that we hope to make
17 in this argument:

18 First, the state is not seeking to prohibit
19 all mining by Granite Rock, nor does the state claim the
20 authority to be able to determine what are permissible
21 and prohibited uses of federal lands. The state accepts
22 mining as a given federally defined and federally
23 authorized use of this property, and it seeks to apply
24 the environmental controls in the Coastal Act to this
25 mining to minimize the adverse environmental effects of

1 that given federally authorized use.

2 And while these environmental controls happen
3 to be included in the Coastal Act, they're no different
4 than environmental and reclamation controls that many
5 other western states have been routinely applying to
6 private mining on federal lands over the years.

7 Secondly, the test for preemption in this case
8 is not whether the state's environmental regulation
9 duplicates that of the Forest Service. There are many
10 areas where federal regulation is not intended to be
11 exclusive and where duplicative state regulation not
12 only doesn't conflict with federal regulation, but
13 actually furthers federal regulatory objectives. We
14 believe that this is one of those cases.

15 The Ninth Circuit we believe applied an
16 erroneous preemption rule because it essentially
17 concluded that the state's regulation inherently
18 undermined the Forest Service's authority simply because
19 the state's regulation duplicated the Forest Service
20 regulation.

21 Finally, the third point, to us it appears as
22 if the relevant question under the Coastal Zone
23 Management Act is not whether the lands Granite Rock is
24 mining fall within the definition of excluded federal
25 lands within the meaning of 16 U.S.C. Section 14531.

1 Rather, to us the relevant question is in excluding
2 federal lands from the coastal zone for purposes of the
3 coastal zone management program did Congress intend to
4 preempt the police power authority that states otherwise
5 have over private activities on excluded federal lands,
6 and which states can enforce apart from the CZMA program
7 under their policy power.

8 QUESTION: Is this being done apart from the
9 CZMA program?

10 MR. MASOUREDIS: Yes, it is. The Coastal Act
11 is an independent police power statute. I think the
12 Ninth Circuit found that. The Act was enacted in 1976
13 and the state was enforcing it long before the coastal
14 zone management program was approved.

15 And even if the state for some reason pulls
16 out of the coastal zone management program or if the
17 federal government terminates our authorization, the
18 state will continue to enforce the Coastal Act.

19 QUESTION: Well, it may not be the same
20 program, but it is certainly the same sort of coastal
21 zone management scheme, as opposed to a separate
22 environmental statute dealing with one or another type
23 of environmental damage.

24 MR. MASOUREDIS: Well, I think again that
25 Public Resources Code 30,008 indicates that the state

1 will apply the environmental controls of the Coastal Act
2 to excluded federal lands. And a coastal zone program
3 is something that the state devises on its own. It can
4 include whatever statutes that it wants in the coastal
5 zone management program. If those meet the federal
6 criteria, the federal government will approve it.

7 But the statutes themselves aren't enforced
8 solely through the coastal zone management program.
9 They had an independent existence to begin with. That's
10 how they got included in the management program. They
11 had to be enacted as police power statutes initially,
12 and those statutes can be enforced wholly independent of
13 the coastal zone management program.

14 It's a voluntary program. States aren't
15 required to join up, and the statutes that they include
16 in the program don't have to be enforced solely through
17 the management program.

18 QUESTION: But if the states can do the same
19 thing by a coastal zone, a state coastal zone management
20 program that is not part of the federal program, what
21 possible purpose does the exclusion of the federal lands
22 from the federal coastal zone management program
23 achieve?

24 MR. MASOUREDIS: As we see it, the CZMA adds
25 to the state's police power. It doesn't detract and

1 limit it. And the purpose of 14531 was a Congressional
2 judgment not to delegate to states the authority to
3 define permissible and prohibited uses of federal
4 lands.

5 The CZMA itself tells a state that it must
6 include in its management program a definition of
7 permissible land and water uses. Now, that's the
8 equivalent of zoning. That's the ability to go out and
9 say: This is a use that will occur here, this use won't
10 occur there.

11 That's what we call land use determination
12 power. States don't have that under their police
13 power. They can't ordinarily do that to federal lands.
14 And I think Congress by enacting the excluded lands
15 provision said, we're going to withhold that delegation
16 of authority and states can't define permissible land
17 and water uses on federal lands.

18 But that doesn't mean that everything that
19 happens to be included in the management program can't
20 be applied to federal lands, because for example the
21 CZMA says that a management program must include the air
22 and water quality requirements of the federal Clean Air
23 and Water Act.

24 And we don't understand Granite Rock or the
25 Solicitor General to be arguing that those things which

1 are in the management program cannot be applied to
2 excluded federal lands.

3 QUESTION: Well, this case really comes to us
4 in quite an abstract position. Just what sort of, if
5 it's possible to say from the record, what sort of
6 questions is California going to ask in this permit
7 proceeding? What sort of restrictions or conditions
8 would it put on the permit that was given to the
9 respondent?

10 MR. MASOUREDIS: I think the things they would
11 be looking at are reclamation for the mining that's
12 occurred, measures to prevent pollution into the Little
13 Sur River. There's overburden stored in particular
14 areas. There's a danger of erosion, runoff from the
15 road from the overburden.

16 The Little Sur River runs in close proximity
17 to this --

18 QUESTION: Danger of runoff from the federal
19 land to the other lands not owned by the federal
20 government?

21 MR. MASOUREDIS: Into the Little Sur River.
22 The mining is occurring on Mount Pico Blanco and there's
23 an extreme slope of about 48 degrees, and the Little Sur
24 River is at the bottom of the canyon, about 2,000 feet
25 from where the overburden is stored. So there is a

1 potential hazard.

2 QUESTION: In principle you, as I understand
3 your argument, in principle you would say that damage to
4 the federally owned land itself would justify the state
5 environmental regulation, even though no non-federally
6 owned land is affected by that damage?

7 MR. MASOUREDIS: That's correct, that's
8 correct. We believe that the state's citizens use,
9 visit, and enjoy federal lands, and that the state does
10 have an interest in environmental degradation on site on
11 federal lands, in addition to --

12 QUESTION: But how many citizens of California
13 want to visit a mining operation that's mining limestone
14 or something?

15 MR. MASOUREDIS: Well, this particular area,
16 the Big Sur coast of California, is very scenic and
17 attracts roughly three million visitors a year. So that
18 the visitors would not be coming to see the particular
19 mining operation, but again the operation is located in
20 the heart of the Big Sur coast of California, in close
21 proximity to Malara State Park, the Ventana Wilderness,
22 the Little Sur River that runs out to the coast.

23 QUESTION: And so you think it's permissible
24 under this scheme that we're talking about here for the
25 state to say that, we want this federal piece of land to

1 be kept up to snuff and appealing to visitors, in
2 keeping with the Big Sur countryside?

3 MR. MASOUREDIS: We think that we're
4 interested in having additional supplemental
5 environmental controls to complement the Forest
6 Service's own surface use requirements. And indeed, the
7 Forest Service's regulations incorporate a number of
8 state police power environmental rules, such as air and
9 water quality and public safety and public health
10 requirements, fire laws.

11 And so to us it appears as if that the Forest
12 Service itself relies upon state environmental
13 regulation as a means to attain the Forest Service's own
14 surface protection interests. It's not simply a
15 question of the state furthering its own interests, but
16 we think those two were very complementary.

17 QUESTION: Well, of course, to the extent that
18 the Forest Service incorporates state regulations the
19 state doesn't have to worry about it, I suppose.

20 MR. MASOUREDIS: Well, under the Ninth
21 Circuit's decision it doesn't appear that that is the
22 case. We read the Ninth Circuit's decision as saying
23 that it's now discretionary with the Forest Service to
24 pick and choose which particular environmental controls
25 it wants to apply.

1 The Ninth Circuit thought that the state
2 enforcement was the problem. Any permit enforcement was
3 what was prohibited, and therefore it said the Forest
4 Service is the only one that does the enforcement. And
5 as a practical matter, there are very limited Forest
6 Service personnel, thousands of claims scattered on
7 millions of acres.

8 And the ranger in the field is unfamiliar with
9 state environmental and police power requirements. He
10 doesn't have the time, the familiarity, or the expertise
11 to apply them. And so we think that as it stands now
12 under the Ninth Circuit's decision we are not assured
13 that there will be any state environmental enforcement.

14 QUESTION: To avoid the preemption by the
15 Coastal Zone Management Act, you really have to rely
16 heavily on the distinction you were drawing earlier
17 between land use restrictions and environmental
18 restrictions.

19 Is that a realistic distinction? I mean,
20 suppose -- prohibition of strip mining, is that a land
21 use restriction or an environmental restriction?

22 MR. MASOUREDIS: I think the difference
23 between a land use determination type of regulation and
24 an environmental one is in the land use context the
25 analysis is, we're going to define what are acceptable

1 uses, without regard to environmental impacts. We just
2 make a decision that residential use or commercial use
3 is or is not allowed in certain areas --

4 QUESTION: Without regard to environmental
5 impacts? But you make that determination usually on the
6 basis of environmental impact, don't you?

7 MR. MASOUREDIS: Not really, not really.
8 First, land use determination is essentially a zoning
9 type decision, and that really is without regard,
10 whereas --

11 QUESTION: On what basis do you zone?

12 MR. MASOUREDIS: Certain amenities, decisions
13 about where the community should grow.

14 QUESTION: "To-mae-to, tom-mat-to." You call
15 them amenities, I call them environmental impacts.
16 Aren't they the same thing you're talking about?

17 MR. MASOUREDIS: I think an environmental
18 regulation is one that says, regardless of what the use
19 is -- and it can be any use -- it has to meet certain
20 environmental standards. So I think analytically there
21 is a different operation that occurs when you're using a
22 land use --

23 QUESTION: I suppose you can say, yes, you
24 can't break the surface of the land. That's an
25 environmental regulation, right? But if you said no

1 strip mining, that would be a land use regulation; is
2 that the distinction you want us to adopt?

3 MR. MASOUREDIS: Well, if you've said that
4 certain activities can't occur because of the
5 environmental effects, we'd agree that that might blend
6 over. Any time you have a Clean Air, Clean Water Act
7 requirement, that might mean that a particular factory
8 can't be built because it can't meet those standards.
9 And so the effects might be in certain cases similar.

10 But I think analytically the two kinds of
11 analyses are different.

12 QUESTION: It seems to be they're both
13 directed to precisely the same thing. You restrict the
14 land use because of the environmental considerations,
15 and to try to sever environmental laws from land use
16 laws seems to me very artificial.

17 MR. MASOUREDIS: I think the important thing
18 here is whether or not the state is going to absolutely
19 prohibit the particular use we're concerned about, which
20 is mining. And we've conceded from the very beginning
21 of this lawsuit that the state cannot impose an absolute
22 prohibition on mining because that's --

23 QUESTION: Could it prohibit strip mining?

24 MR. MASOUREDIS: That's correct.

25 QUESTION: It could prohibit strip mining, but

1 not mining?

2 MR. MASOUREDIS: Oh, no. I'm sorry, I
3 misunderstood your question. No, the state could not
4 prohibit mining on these federal lands.

5 QUESTION: I'm not saying -- it isn't
6 prohibiting all mining; it's just prohibiting strip
7 mining. You can mine so long as you do it by, you know,
8 by subterranean methods, the breaking of the surface.
9 Now, that's not prohibiting mining.

10 MR. MASOUREDIS: That's right, but it's
11 defining a particular type of mining. Yes, that's what
12 we're arguing, that the state can impose certain kinds
13 of controls.

14 QUESTION: So the state could prohibit strip
15 mining?

16 MR. MASOUREDIS: Yes, a certain type of
17 mining, but not all mining per se.

18 QUESTION: That could substantially modify the
19 value of the land use classification given by the Forest
20 Service. If the Forest Service says you can prospect or
21 mine limestone on this claim and the state of California
22 can come along and say, well, you can't mine limestone
23 in a particular manner, is that -- do you go that far?

24 MR. MASOUREDIS: We're not intending to
25 interfere with any of the designations for the use of

1 the land. We're seeking to apply a regulation just to
2 control how the use is carried out.

3 QUESTION: But do you really think there is
4 that air-tight compartment -- I think Justice Scalia
5 suggested to you this in his question -- between
6 designating the use of the land on the one hand and
7 designating the environmental aspects of the use or
8 whatever you want to call it?

9 MR. MASOUREDIS: No, I'd agree that at a
10 certain point there might be certain circumstances where
11 the state's environmental regulation could conceivably
12 be too onerous and could affect the actual mining use,
13 the ability to carry out the mining use on federal
14 lands.

15 We'd agree that at that point the regulation
16 has gone too far. But I don't think that that is the
17 question that's presented here in this case. There is
18 no evidence at all that Granite Rock couldn't comply
19 with any reasonable Coastal Commission permit
20 requirements.

21 QUESTION: Well, we really have nothing before
22 us here to tell us how demanding the California Coastal
23 Commission would be that has jurisdiction, isn't that
24 right?

25 MR. MASOUREDIS: That's correct, that's

1 absolutely right.

2 QUESTION: What do you think the purpose of
3 the consistency review provisions in CZMA are if the
4 state has this independent power to regulate that you
5 assert?

6 MR. MASOUREDIS: Again, the consistency review
7 provisions deal with the effects that activities on
8 federal lands have offsite on non-federal lands. The
9 consistency review is limited to those offsite effects,
10 and that is different that the kind of review the state
11 would have over effects on-site, on federal lands. So
12 it's a different scope.

13 And in addition, I just point out that even as
14 to off-site effects there is some question whether the
15 state could adequately regulate those as well under
16 consistency, as it could under its direct police power,
17 because there's a particular legal test.

18 The state has to demonstrate for consistency
19 purposes that the activities on-site are likely to have
20 effects off-site. And in the real world there are
21 oftentimes very indirect, multi-causal relationships, so
22 that activities on-site don't have these direct off-site
23 effects.

24 So consistency review is not a substitute, we
25 believe, for direct permit regulation under the police

1 power.

2 QUESTION: Did I understand you correctly to
3 concede that the land at issue here held under the
4 mining claim of Granite Rock fits within the definition
5 of CZMA which excludes lands subject to the discretion
6 of the federal government or held in trust by the
7 federal government?

8 MR. MASOUREDIS: Well, we believe the district
9 correctly decided that question, but we don't think we
10 have to reach it here. We think we can win this case
11 even if these lands are excluded federal lands, because
12 we think the question is did the CZMA --

13 QUESTION: And you are willing to concede that
14 they are in that definition?

15 MR. MASOUREDIS: For purposes here, yes, we
16 would. We do believe that the district court correctly
17 decided it, but we think we can win the case even if
18 they are viewed as excluded.

19 QUESTION: Of course, if you construed the
20 language in light of the legislative history as
21 Congressional -- a statement of Congressional intent to
22 exclude any state regulation, the case would be over,
23 wouldn't it?

24 MR. MASOUREDIS: I think, but I think that
25 question is directly answered by the federal CZMA

1 regulations that the National Oceanic and Atmospheric
2 Administration adopted, 15 CFR 923.

3 QUESTION: Well then, you don't concede for
4 this case that these lands here have been excluded under
5 the CZMA?

6 MR. MASOUREDIS: Well, we think we can win the
7 case even if they are excluded, because the CZMA doesn't
8 preempt the state's inherent police power, and this
9 Coastal Act is a police power statute.

10 QUESTION: Well, it could if Congress intended
11 it to?

12 MR. MASOUREDIS: Yet, it could, it could. But
13 I think the evidence really in the legislative history,
14 in the regulations, and in the express savings clause of
15 the statute indicates --

16 QUESTION: Well, who puts out the regulations
17 you're talking to?

18 MR. MASOUREDIS: This is the National Oceanic
19 and Atmospheric Administration.

20 QUESTION: Is that in the Department of
21 Commerce?

22 MR. MASOUREDIS: Yes, and they administer the
23 CZMA program. And that regulation directly says that,
24 in excluding federal lands for the purposes of the CZMA
25 program a state does not impair whatever authority it

1 has over federal lands apart from the CZMA program.

2 QUESTION: Well, the United States -- and I
3 suppose it's representing the Commerce Department --
4 says you're wrong.

5 MR. MASOUREDIS: Well, no, they didn't mention
6 that provision, that regulation. Their argument is
7 directed to the excluded lands question, not the
8 preemptive intent behind the CZMA.

9 QUESTION: Well, their argument is a
10 preemption argument.

11 MR. MASOUREDIS: Well, it is based on the idea
12 that the excluded lands question --

13 QUESTION: Of course it is.

14 MR. MASOUREDIS: -- controls.

15 QUESTION: Well, when this action was brought
16 in the district court by your opponents to enjoin you
17 from exacting any sort of a permit requirement, neither
18 the district court nor the Court of Appeals really went
19 into what that permit requirement required, did they?

20 MR. MASOUREDIS: No, neither one.

21 QUESTION: So in a sense, I suppose you're
22 entitled to prevail if any sort of permit requirements
23 that might reasonably be conceived of would not be
24 entirely preempted.

25 MR. MASOUREDIS: Yes. We think that this

1 Court in the takings cases in fact has addressed this,
2 this ripeness issue, in cases like Agins, San Diego Gas
3 & Electric, Williamson County, and McDonald, Sumner &
4 Frates, and has said that the Court won't consider
5 whether the state regulation has gone too far until the
6 state has had an opportunity to make a final decision
7 exactly how its regulation will be applied to a
8 particular landowner in a particular case.

9 QUESTION: So in your view, if California
10 could impose any sort of requirement at all as a
11 condition of its permit, you want to prevail here,
12 because that was really the only issue before the courts
13 below?

14 MR. MASOUREDIS: That's correct, yes. That's
15 our position.

16 QUESTION: Permitting, to go back to the
17 distinction you seek to draw, the validity of which I'm
18 not so sure about, the permitting is a permitting of
19 use, right? You cannot use the land for mining without
20 getting the California permit.

21 MR. MASOUREDIS: The permit is a vehicle for
22 attaching --

23 QUESTION: Well, it may be a vehicle for that,
24 but what you permit is the use.

25 MR. MASOUREDIS: Well, we've conceded that we

1 can't deny the use. So that's the -- we can't deny a
2 permit. And so the permit is being used solely to
3 include --

4 QUESTION: But of course you can deny a
5 permit. What's the purpose of a permitting program
6 unless you can deny a permit? You mean every
7 application for a permit has to be granted?

8 MR. MASOUREDIS: No, only when there's a
9 preemption limit and when we can't deny a particular
10 federally authorized use.

11 QUESTION: But when you deny a permit you are
12 denying a particular use. You're saying no mining,
13 aren't you?

14 MR. MASOUREDIS: Yes, that's correct. But
15 again, we've conceded in this case that we cannot deny
16 this mining company, who is operating on federal lands,
17 a permit. The permit is being used solely to include
18 environmental conditions on the operation.

19 QUESTION: I think we're saying the same
20 thing. You can deny them a permit until they shape up
21 their environmental operation.

22 MR. MASOUREDIS: Right, yes. The criteria for
23 applying is whether they've included these environmental
24 controls.

25 Now, to briefly describe the facts. Granite

1 Rock's mining is occurring just inside the boundaries of
2 the Los Padres National Forest. The Forest Service
3 approved the plan of operation in 1981. The Forest
4 Service stated in its approval of the plan and in its
5 modifications that Granite Rock should obtain necessary
6 state permits.

7 In its environmental assessment, the Forest
8 Service also indicated that Granite Rock should obtain
9 any necessary Coastal Commission permits.

10 I just wanted to touch on one additional fact
11 and let the Court know that the 1981 plan of operation
12 has expired. It expired last year. But the case is not
13 moot in our view because there is a live dispute as to
14 the need for mitigation and reclamation conditions for
15 the mining.

16 QUESTION: What was it that expired?

17 MR. MASOUREDIS: The plan of operation. The
18 Forest Service issued a plan of operation for this
19 mining.

20 But the mining company has admitted doing
21 mining after the date of the Commission's letter
22 informing them that they needed a permit, and therefore
23 there is a live controversy as to the need for
24 reclamation and mitigation conditions for the mining
25 that occurred after the date of that letter.

1 I think in the remaining time I have I would
2 just like to again emphasize that the Coastal Zone
3 Management Act in this case is a statute which
4 supplements the state's police power authority. It
5 wasn't intended to --

6 QUESTION: Could I go back to that point. Is
7 the company now mining?

8 MR. MASOUREDIS: They're not mining right
9 now. I believe they have plans to submit an application
10 for a new plan.

11 QUESTION: To the Forest Service?

12 MR. MASOUREDIS: Yes. And I think they're in
13 the early stages of preparing an environmental impact
14 statement for future mining activities.

15 QUESTION: So this controversy isn't dead, you
16 say, and if this particular one is it's going to recur
17 very soon?

18 MR. MASOUREDIS: Yes, yes.

19 The CZMA is essentially a statute which adds
20 to the state's police power authority. It's not one
21 that replaces it. And I think to conclude otherwise
22 would lead to very bizarre results.

23 It would mean that those inland states, like
24 Colorado and Wyoming and Montana, which have been
25 regularly applying environmental controls to private

1 mining activities on federal lands can continue to do so
2 because they're unaffected by the CZMA, whereas those
3 coastal states which chose to participate in the CZMA
4 program are stripped of that police power authority.

5 It would also mean that, even within the state
6 of California, there is a bizarre distinction between
7 the state's ability to apply regulatory controls in the
8 inland portion of the state, federal lands in the inland
9 portion, but that within the coastal zone the state's
10 police power is collapsed within the confines of the
11 CZMA program.

12 And we don't see that there is any evidence of
13 that in the legislative history or the language of the
14 CZMA statute.

15 I would like to reserve the remaining balance
16 of my time.

17 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
18 Masouredis.

19 We will hear now from you, Ms. Banke.

20 ORAL ARGUMENT OF

21 BARBARA R. BANKE, ESQ.,

22 ON BEHALF OF APPELLEE

23 MS. BANKE: Mr. Chief Justice and may it
24 please the Court:

25 The issue in this case is not whether all

1 environmental regulations by a state are preempted. The
2 issue that was presented at the court below is whether
3 coastal development permit jurisdiction over these
4 mining claims on federal lands is preempted.

5 And there is a difference, I believe, between
6 environmental standards, which the state definitely has
7 the right to impose and does impose via the Forest
8 Service in the permitting process by the federal
9 government, and a coastal development permit, which we
10 believe is an impermissible veto power on the right of
11 the federal government to define the use of the federal
12 lands.

13 QUESTION: Now, your opponent I don't think
14 agrees with you, Ms. Banke. He says that he agrees they
15 don't have the right to say you can't mine. He says
16 that they may want to attach conditions relating to the
17 environment to the mining operation.

18 MS. BANKE: Your Honor, there is no purpose
19 for the permitting process other than an intent by the
20 Coastal Commission to control the use of these lands,
21 because the Coastal Commission already has the right, as
22 does the state of California, to set environmental
23 standards for air quality and water quality, solid waste
24 management, fire prevention.

25 These standards are applied by the Forest

1 Service through the approval process of a plan of
2 operations, and were applied in this case.

3 QUESTION: Excuse me. Is this just as a
4 matter of grace or you think the Forest Service has to
5 apply state environmental regulations?

6 MS. BANKE: The Forest Service regulations
7 state that the Forest Service is to apply state and
8 federal standards.

9 QUESTION: That's not what I asked. I know
10 the regulations state that. Must they state that?

11 MS. BANKE: I believe they --

12 QUESTION: Do those state laws apply ex
13 proprio vigore, as we say?

14 MS. BANKE: I believe that the Forest Service
15 does have discretion to ascertain whether those
16 regulations are an unreasonable constraint on the use of
17 the federal lands. So I believe that they do have some
18 discretion.

19 QUESTION: I'm not sure. You say that they
20 apply of their own force, unless they unduly inhibit the
21 what?

22 MS. BANKE: The use of the federal lands.

23 QUESTION: Unless they unduly inhibit the use
24 of the federal lands.

25 MS. BANKE: But in this case --

1 QUESTION: So basically, as far as the
2 application of the state environmental laws are
3 concerned, you don't disagree with the state of
4 California? You're just quibbling over whether this is
5 an environmental law, that's all. That's all you're
6 talking about.

7 MS. BANKE: I believe that we do quibble with
8 the state of California over whether it may in this case
9 impose a coastal development permit --

10 QUESTION: Right, okay.

11 MS. BANKE: -- on the use of these lands.

12 QUESTION: If they did this by ordinary
13 application of their environmental laws and moved in on
14 the mining company on the basis of some other statute
15 than this particular one, you'd say exactly what the
16 state of California says, that they can do it so long as
17 it doesn't unduly inhibit mining, whatever that means?

18 MS. BANKE: Yes, through those standards, and
19 those have been applied. That is not what Granite Rock
20 is quarreling about.

21 QUESTION: It's a very small dispute we have
22 before us, then, isn't it?

23 MS. BANKE: Well, it's a major dispute to
24 Granite Rock. The reason that we're here is because
25 when we received the letter telling Granite Rock that it

1 had to apply for a coastal development permit, it was
2 already two years into its mining operation pursuant to
3 the federal plan of operations, and it had been
4 subjected to state and federal standards.

5 When it received the letter, it had a choice
6 of either shutting down the mining operation or
7 subjecting itself to possible coastal development
8 penalties, which are severe and can range as much as
9 \$5,000 a day. So this is a live controversy in our
10 view.

11 QUESTION: Well, why was it that stark? As I
12 read the last paragraph -- we're talking about the
13 letter of October 17th, 1983?

14 MS. BANKE: Yes, Your Honor.

15 QUESTION: "Granite Rock is hereby notified of
16 its obligation to submit for Coastal Commission review
17 and approval a certification of consistency with the
18 state's coastal management program and for any future
19 plan of operations."

20 Is it your view that you simply could not have
21 submitted any such certificate?

22 MS. BANKE: Your Honor, it is not the
23 consistency review aspect of that letter that we're
24 challenging. I believe in the paragraph immediately
25 preceding that which you read it states that Granite

1 Rock must apply for a permit.

2 So they are making two requirements in that
3 letter: One is that Granite Rock seek consistency
4 review for any amendments to the plan of operation; and
5 the second is that Granite Rock seek a coastal
6 development permit.

7 Now, formerly at issue was whether Granite
8 Rock had to seek consistency review, but the Coastal
9 Commission admitted at an early stage that that was
10 waived, because they had had actual notice of the plan
11 of operations but did not act upon it within the time.

12 QUESTION: So it's just a permit, and we don't
13 know from this record what sort of conditions the
14 Commission might have imposed in exchange for a permit?

15 MS. BANKE: That is correct, except insofar as
16 I believe they're disingenuous when they say they would
17 only apply water or air quality, because those were
18 already applied and would already be applied in a
19 consistency review of any future plan of operation.

20 What a coastal development permit is is a
21 permit for development, and development is defined by
22 the California Coastal Act as a change in use or the
23 intensity of use. And we believe that that is an
24 impermissible power given to the state of California to
25 control the use of these federal lands.

1 QUESTION: No consistency review was sought,
2 was there?

3 MS. BANKE: No consistency review was sought
4 at the earlier stage. We do have a new plan of
5 operations and it is possible that it will come up in
6 that context.

7 QUESTION: I should ask your opponent. Do you
8 know why none was sought?

9 MS. BANKE: I do not know. Actual notice was
10 given. Perhaps they did not have any objection to the
11 environmental review at that time.

12 QUESTION: Let's assume that we agree that
13 California can impose its environmental laws, but cannot
14 impose a permit. How does it administer its
15 environmental laws? Are you giving the state something
16 that's of no value whatever?

17 How does it administer its environmental laws
18 without a permitting system?

19 MS. BANKE: It can administer its
20 environmental laws through standards which are applied
21 to these lands and to the mining on these lands through
22 consistency review.

23 In consistency review the Congress thought
24 that it was giving the states an incentive to enter into
25 a state's coastal planning process, because the state

1 could provide the type of input into the federal
2 approval that would give it some meaningful
3 participation.

4 QUESTION: But that's discretionary with the
5 federal government. I mean, the Forest Service can say,
6 we disagree with you that this is inconsistent and we're
7 going to go ahead and allow the plan this way. You're
8 saying the state has its own sovereign power to apply
9 its environmental laws.

10 So it says, we want this in consistency
11 review. The Forest Service says, we won't give it to
12 you. Now the state wants to apply its environmental
13 laws. How does it do that?

14 MS. BANKE: I believe that the state would
15 have a problem in that context and would have a dispute
16 with the federal government over the standards it seeks
17 to apply. I do believe that the federal government has
18 the last word.

19 QUESTION: Let's assume that the state has
20 given its input and the plan of action or of operation
21 wholly satisfies the state as it is issued. But does
22 the state then have some independent power to enforce
23 the terms of the federal permit?

24 MS. BANKE: If the federal --

25 QUESTION: Suppose that they send an inspector

1 out there and your client just isn't living up to the
2 permit, the federal permit. Can they go to court?

3 MS. BANKE: I believe that they can go to
4 court.

5 QUESTION: And enforce their standards?

6 MS. BANKE: Yes, because the Forest Service
7 has a duty to enforce the standards.

8 QUESTION: And what if the Forest Service
9 says, you're all wrong, Mr. Inspector, they're
10 completely complying with? Then there's a case or
11 controversy, I suppose. Can California then go to court
12 and allege that and try out whether the company is
13 complying?

14 MS. BANKE: I believe it can if the company is
15 not complying with the standards. There is no
16 allegation here that the company is not complying with
17 the --

18 QUESTION: Even though the federal government,
19 as I understood Justice White's question, the federal
20 government says they're complying, but the state thinks
21 that they're not?

22 MS. BANKE: I believe that the federal
23 government would have the last word and would prevail in
24 that case, if in fact the company was complying with the
25 standards.

1 QUESTION: You mean a judge wouldn't? A judge
2 wouldn't have the last word?

3 MS. BANKE: Well, I believe that they would
4 prevail in court.

5 QUESTION: All the United States has to do is
6 to go in and move to dismiss the action, saying:
7 They're just wrong; they are in compliance?

8 MS. BANKE: If the government of the United
9 States could show that Granite Rock was in compliance, I
10 believe that they would prevail.

11 QUESTION: Well, who decides?

12 MS. BANKE: The court would decide, in my
13 opinion.

14 QUESTION: Well, what if there is a trial and
15 the government says they're complying, your client says
16 they are not? And then the judge decides?

17 MS. BANKE: Yes, I believe that would be the
18 case.

19 QUESTION: And the judge could then rule and
20 say, Mr. Forest Service, you're dead wrong, Granite Rock
21 is not complying?

22 MS. BANKE: If the Forest Service was
23 incorrect in applying the standards.

24 QUESTION: Well, who decides?

25 MS. BANKE: At the administrative level, I

1 believe the Forest Service would decide. But then
2 perhaps there would be a case or controversy where the
3 state could take the Forest Service to court.

4 But that is not what we are challenging in
5 this case.

6 QUESTION: Well, is there any allegation here
7 that the plan of operation that was issued did not
8 contain the state standards?

9 MS. BANKE: No.

10 QUESTION: Is there agreement that it did?

11 MS. BANKE: We have stated in undisputed
12 affidavits and in the plan of operations itself, which
13 is in the appendix, it is stated that the state
14 standards were applied for air quality and water
15 quality. And there has been no allegation --

16 QUESTION: And even so, the state wants a
17 permit?

18 MS. BANKE: Even so, the state wants a permit,
19 yes.

20 QUESTION: Just so they could enforce the --
21 why would they need -- they wouldn't need a permit to
22 enforce those standards, I gather you say?

23 MS. BANKE: Yes, that is my point, Justice
24 White.

25 QUESTION: Well, aren't there other

1 environmental considerations besides air and water
2 quality?

3 MS. BANKE: Yes.

4 QUESTION: I mean, such as, you know, removing
5 a whole hillside that's there on the Big Sur? That's
6 not a nice thing to do. Couldn't the state consider
7 that an environmental concern?

8 MS. BANKE: Technically, I believe the state
9 could consider that an environmental concern. But the
10 Forest Service regulations provide that the state
11 standards on four subjects shall be considered, and
12 those are: air quality, water quality, solid waste
13 management, and fire protection.

14 QUESTION: Shall be considered or shall be
15 applied?

16 MS. BANKE: Shall be applied.

17 QUESTION: Or shall apply? Shall apply
18 automatically?

19 MS. BANKE: Shall apply, shall be applied. I
20 believe that the last word as to whether they have been
21 applied and complied with is in the Forest Service,
22 however.

23 QUESTION: But does that mean that if the
24 state during the existence of a permit, after you've
25 been mining for a couple of years, decided to make the

1 standards a little more strict, would you have to comply
2 with the more strict standard or only those that applied
3 at the time you got the permit?

4 MS. BANKE: Only those that applied at the
5 time of the permit, I believe, until a new permit was
6 sought.

7 QUESTION: So that the state could not change
8 the standard?

9 MS. BANKE: I do not believe that the state
10 could change the standard.

11 QUESTION: Well, I am really confused. I
12 thought you said earlier that you do not contest the
13 state's power on its own to apply its own environmental
14 laws. But now you seem to be saying, in response to the
15 more recent questions, that they can't, that they can't
16 go beyond what they succeeded in getting the Forest
17 Service to put in the Forest Service regulations, or in
18 the permit.

19 MS. BANKE: I believe that they cannot go
20 beyond that.

21 QUESTION: It's the latter, okay.

22 MS. BANKE: Yes. And the reason for that is
23 that these are federal lands, and pursuant to the
24 property clause Congress is to have the full authority
25 to control the use and disposition of these lands.

1 I believe Justice Scalia is correct when he
2 says the distinction between land use and environmental
3 controls might be difficult to apply. Perhaps the
4 Coastal Commission might say that a large scale mining
5 operation is not something that is a suitable use for
6 this land.

7 QUESTION: Are the mining regulations such
8 that these people could ultimately patent this claim?

9 MS. BANKE: Ultimately, if all goes well in
10 the exploratory phases of the mining operation which
11 Granite Rock is currently -- was engaged in prior to the
12 letter and would re-engage in if approval of the plan of
13 operations is obtained, yes, ultimately they can
14 patent.

15 QUESTION: And now they have a right of
16 occupancy and a right to pursue their mining
17 activities?

18 MS. BANKE: Yes, they do have a right of
19 occupancy and to pursue the mining activities. The
20 Forest Service still controls the surface of the lands
21 and those lands are still open for surface uses that are
22 not inconsistent with the mining.

23 Factually, this mining operation is
24 approximately five miles inland from the coast. It is
25 not visible from the coast, and it is not in an area

1 that is widely traveled by the public. It is in an area
2 which is fairly remote.

3 The mining claimants on federal lands have
4 historically not been subject to a state's land use
5 controls or zoning controls.

6 QUESTION: Suppose there was no federal
7 coastal act and no plan of operation at all. There was
8 just a mining claim under which the company was
9 occupying the claim and mining. And the state came in
10 and said: By the way, you're dirtying up this river; we
11 want you to stop it; you have to comply with our state
12 law; let's read it.

13 And the company says: Yes, we are, if that
14 law applies, we're violating it. Would you say that the
15 state was exceeding its power there?

16 MS. BANKE: No. If pollution of a state
17 waterway was involved, I believe the state could enforce
18 its laws.

19 QUESTION: And even though as far as the
20 federal government was concerned it was mining and it
21 was doing a permissible job of mining?

22 MS. BANKE: If the company was engaged in what
23 would be a nuisance, pollution of the waterway, the
24 state could enforce it.

25 QUESTION: So you -- I take it then you say

1 it's the federal coastal zone act that does the
2 preempting.

3 MS. BANKE: There are several things that do
4 the preempting in my opinion. The clearest preemption
5 is in the coastal zone management.

6 QUESTION: Well, the mining law by itself
7 wouldn't. The mining law by itself wouldn't.

8 MS. BANKE: The mining law --

9 QUESTION: You just said it wouldn't.

10 MS. BANKE: That is correct, it would not
11 prohibit that type of regulation. I believe that it
12 would preempt the coastal development permit, because
13 that is a permit which is related to the use of the
14 land, and which is triggered by a change in the use of
15 the land.

16 And the Forest Service regulations would also
17 preempt.

18 QUESTION: Suppose they weren't polluting a
19 state waterway. That makes it too easy, because the
20 waterway normally would go off of the federal lands onto
21 the state lands. Suppose all they do is they strip mine
22 and do not reclaim by reseeding what they have stripped,
23 and the state has a law requiring reclamation of the
24 stripped land.

25 Would that law be binding?

1 MS. BANKE: I do not believe that
2 independently it would be binding, because it is already
3 provided for in the Forest Service regulations.

4 QUESTION: No, I was adopting Justice White's
5 forest primieval hypothesis. You know, we have the
6 federal mining law, but there is no federal
7 environmental regulation whatever. None exists.

8 QUESTION: There's no coastal zone mining
9 act.

10 QUESTION: No coastal zone mining act, no
11 federal laws at all. There is nothing out there to
12 control people unless the state law applies.

13 MS. BANKE: Then it might apply. But in this
14 case I believe that the Forest Service regulations
15 provide for a unified application of state and federal
16 reclamation standards.

17 QUESTION: So it really is the Act and the
18 regulations that do the preempting primarily.

19 MS. BANKE: Yes. Yes, it is. I believe that
20 Congress has spoken and that inconsistent state laws
21 must recede.

22 The Coastal Zone Management Act, however, is
23 the clearest example of preemption, because there it
24 states in the federal lands exclusion that federal lands
25 are excluded from a coastal zone.

1 QUESTION: So federal lands in the coastal
2 zone are less subject to state regulation than federal
3 lands outside the coastal zone?

4 MS. BANKE: No, I believe that that statement
5 is consistent with law, that it is a clear exposition of
6 the law, that a state may not control the use and
7 disposition of the lands.

8 But in that case, Congress has clearly spoken
9 to say that permit regulation over federal lands by a
10 state Coastal Commission is prohibited.

11 And the Coastal Commission has asserted that
12 it is not just under the federal Coastal Zone Management
13 Act. However, it in the joint appendix has stated that
14 its regulations -- in the original coastal management
15 program of the state of California, it stated that it
16 was within the federal coastal zone exclusion and that
17 it would abide by that exclusion.

18 It is not abiding by the exclusion any more.
19 Instead, it's seeking judicial modification of what it
20 had previously agreed to do.

21 QUESTION: Ms. Banke, what do you do about the
22 regulations that, as I recall, they require that the
23 mining company have obtained all necessary permits,
24 which seems to refer to state permits?

25 MS. BANKE: The regulations I don't believe

1 contain that statement. That was contained in the plan
2 of operations.

3 QUESTION: In the plan.

4 MS. BANKE: And that, there are two reasons.
5 A necessary permit is a permit that is not preempted,
6 and the coastal zone permit in this case is preempted by
7 the Coastal Zone Management Act and the Forest Service
8 regulations.

9 QUESTION: What permit wouldn't be preempted?
10 I mean, I thought your argument was that the states have
11 no power to require a permit, period, of mining; that
12 the federal government has authorized mining and you
13 don't need a state permit.

14 But here is a plan that says you have to have
15 all necessary permits, and I think it's conceded that
16 that includes state permits.

17 MS. BANKE: I don't -- it is not conceded. My
18 second point is that I do not believe that the Forest
19 Service operator has the right to bind the United States
20 in that plan, when it is clear from the Forest Service
21 regulations that there is to be a unified system of
22 approval, with the state requirements considered before
23 the approval is given by the Forest Service.

24 CHIEF JUSTICE REHNQUIST: Thank you, Ms.
25 Banke.

1 We will hear now from you, Mr. Minear.

2 ORAL ARGUMENT OF JEFFREY P. MINEAR, ESQ.,

3 ON BEHALF OF THE UNITED STATES,

4 AS AMICUS CURIAE, SUPPORTING APPELLEE

5 MR. MINEAR: Mr. Chief Justice and may it
6 please the Court:

7 The United States submits that the CZMA
8 provides a direct and dispositive answer to the present
9 dispute. The CZMA's federal lands exclusion exempts all
10 federally owned land from direct regulation under state
11 coastal management programs. The federal lands
12 exclusion is fully applicable in this case and requires
13 affirmance of the judgment below.

14 Our analysis begins, of course, with the
15 CZMA. The CZMA was enacted to encourage the states to
16 develop state land use management programs for the
17 coastal zone. The California Coastal Act is
18 California's coastal zone management program, and as
19 such it is subject to the CZMA's federal lands exclusion
20 set forth in Section 304, which excludes from state
21 regulation lands the use of which is subject solely to
22 the discretion of the federal government.

23 QUESTION: What if it weren't California
24 coastal zone management program? Do you agree with Mr.
25 Masouredis that this would be a different matter?

1 MR. MINEAR: It depends on the source of the
2 law that California is seeking to impose. The issue in
3 this case deals directly with the coastal development
4 permit required under the Coastal Act of California.
5 Our view is that that is the same, the very same program
6 as the CZMA-approved program. That was our
7 understanding at the time we approved it.

8 QUESTION: Okay. Now, just on the chance that
9 we don't all agree with you on that, what if California
10 has a separate environmental law?

11 MR. MINEAR: Other environmental laws --
12 California may have other environmental laws that impose
13 permitting requirements. In those cases, they may very
14 well be applicable to federal lands. That will require
15 and individual preemption analysis depending on the
16 requirements of that particular permit.

17 QUESTION: Even though they bear upon mining
18 use and even though they require a preliminary permit?

19 MR. MINEAR: Yes. Examples of these: for
20 example, California does impose water quality permits
21 for discharges into navigable waters. Now, we believe
22 that those permits could be applied to federal lands,
23 primarily because it will have an effect off the federal
24 lands. There is in fact an effect, an external effect
25 outside of the federal lands.

1 QUESTION: So California could essentially
2 achieve what it wanted to do here by just putting in a
3 different statute?

4 MR. MINEAR: It could with respect to what we
5 view as pollution control requirements. It's a
6 different matter with respect to land use restrictions,
7 and we believe that there is a distinction between land
8 use requirements and pollution control requirements.

9 QUESTION: But you seem to know a good deal
10 more about what the California Coastal Commission might
11 require as a condition of this permit than a lot of
12 other people in the case. Can you be that confident
13 that nothing it might require would be permissible?

14 MR. MINEAR: Well, we have to judge the
15 statute based on what the California Coastal Act
16 provides, and the California Coastal Act provides that
17 any development within the coastal zone must obtain --
18 any developer, must obtain a coastal development
19 permit.

20 In order to obtain a coastal development
21 permit, the developer has to show that his development
22 is consistent with the local coastal program. The local
23 coastal program has a land use plan.

24 QUESTION: But that's been waived in this
25 case, hasn't it? The consistency check?

1 MR. MINEAR: Well, this is something apart
2 from the consistency review requirements. These are the
3 actual requirements of the California Coastal Act. The
4 statute itself says that in order to obtain a
5 development permit you must show consistency with the
6 local coastal plan, in this case the Big Sur land use
7 plan.

8 Now, that plan is a land use plan. It
9 prescribes and prohibits particular land uses. Now,
10 California says at this juncture that they would not
11 apply it in that manner, but I think we have to judge
12 the case on the basis of what the statute in fact says.

13 California really contends that the federal
14 lands exclusion in this case is inapplicable for two
15 reasons: First, the original argument that they made
16 was that the statutory exclusion does not apply to
17 federal lands that are subject to a mining claim. This
18 contention is the contention that was set forth in the
19 letter that was originally sent to Granite Rock, that is
20 contained in the joint appendix at page 22 to 23.

21 Now, this contention I think all agree now is
22 plainly wrong. Federal lands that are subject to mining
23 claims remain in federal ownership and hence are
24 excluded lands within the meaning of the CZMA
25 regulations.

1 The Coastal Commission also argues that the
2 federal lands exclusion does not limit the Commission's
3 authority in this case because the Coastal Act is an
4 exercise of the state's inherent police power that
5 exists independently of the CZMA. That is the ground
6 that's offered primarily by the state at this juncture.

7 But the CZMA clearly contemplates that once a
8 state's coastal management program is approved it will
9 provide a singular and complete coastal management
10 program for the state's coastal zone. There is no --

11 QUESTION: You do not confront the problem of
12 having inland states more restricted than coastal states
13 by reason of the Coastal Zone Management Act. What you
14 say is that both inland and coastal states can apply
15 their environmental laws; the only thing is that coastal
16 zone acts, which are coastal zone programs, can't
17 conflict with the federal one or augment the federal
18 one?

19 MR. MINEAR: Justice Scalia, we suggest this
20 is a bit of a red herring here, because a mining
21 development 100 miles inland is subject to the same
22 regulations of the California regime that a similar
23 mining development inland would be subject to.

24 In other words, we're talking only about the
25 coastal zone in this case. But California also has --

1 its environmental laws can be applied to an inland mine,
2 and those would be applicable in this case as well and
3 would be outside the coastal development program which
4 is of central concern in this case.

5 QUESTION: Mr. Minear, the Court of Appeals
6 opinion of course didn't go off on the CZMA ground at
7 all.

8 MR. MINEAR: Yes, that is correct.

9 QUESTION: And I take it you are urging that
10 we decide the case on a ground not decided or discussed
11 in the Ninth Circuit opinion?

12 MR. MINEAR: That is correct, Justice
13 O'Connor. We think that that is the clearest and
14 easiest solution for this case.

15 Returning again to California's statement that
16 they have independent power to impose their Coastal Act,
17 I think the important thing to remember here is Congress
18 really would have had no purpose for establishing the
19 Coastal Zone Management Act in those circumstances. It
20 provided federal funding and consistency review. Those
21 incentives are the core of the coastal zone management
22 program.

23 In return, it gets compliance with the
24 regulations that are set forth in the program. And for
25 example, the consistency review process would be

1 pointless if a state could impose its regulatory regime
2 directly as an exercise of inherent police power.
3 There'd simply be no point in imposing a consistency
4 review process on federal lands.

5 The CZMA expressly states that federal
6 approval of the state coastal management program is
7 conditioned on state compliance with the federal rules
8 and regulations that govern the CZMA programs, and those
9 regulations include the CZMA's federal lands exclusion.
10 The fact that the states may retain authority to
11 regulate federal lands under other state statutory
12 regimes, such as the clean water act statute I alluded
13 to earlier before, is beside the point.

14 The California Coastal Act is a federally
15 approved CZMA program. It must comply with the
16 pertinent CZMA regulations.

17 QUESTION: Mr. Minear, has California
18 attempted to engage in a so-called consistency review
19 process to make its coastal zone management provisions
20 applicable to federal lands such as this?

21 MR. MINEAR: Your Honor --

22 QUESTION: Did it make that effort through the
23 consistency review process?

24 MR. MINEAR: California waived that
25 opportunity in this particular case, and it will have

1 that opportunity again when Granite Rock submits a new
2 plan of operations. In the federal government's view,
3 that is a permit within the meaning of Section 307 and
4 therefore it is subject to consistency review
5 requirements of Section 307.3.

6 I think it's also worth pointing out here that
7 California at the time that it sought its CZMA approval
8 expressly stated that federal lands would be excluded
9 from the California state zone, state coastal zone.
10 This appears at the joint appendix, page 106.

11 And although California later amended its
12 statute, that amendment, we were instructed, amounted
13 only to a technical change, did not amount to any
14 substantial amendment in their coastal zone program. If
15 it had amounted to such a change, they would have had to
16 have sought an amendment approval from NOAA through the
17 CZMA regulations. These are set forth at 933.80 of the
18 Code of Federal Regulations.

19 QUESTION: Under the Coastal Zone Act, I
20 suppose California could have required a permit for this
21 mining development?

22 MR. MINEAR: It could not have -- in our view,
23 it could not have required a land use permit. It could
24 have required pollution control permits of various
25 kinds. However, it simply does not have the power under

1 the statutes that are already in effect that govern the
2 Forest Service lands and the BLM lands to impose land
3 use requirements.

4 It's essential in the national interest that
5 the federal government retain control of the ultimate
6 use of federal lands.

7 I see that my time has expired.

8 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
9 Mienar.

10 Mr. Masouredis, do you have anything more?
11 You have four minutes remaining.

12 REBUTTAL ARGUMENT OF
13 LINUS MASOUREDIS, ESQ.,
14 ON BEHALF OF APPELLANTS

15 MR. MASOUREDIS: Yes, very briefly. First of
16 all, I think we have a disagreement as to what the terms
17 are of the Coastal Act itself and the permitting
18 process. The Coastal Act has two types of permitting
19 processes.

20 One occurs when a local coastal program has
21 been reviewed and certified, the implementing ordinances
22 have been approved, and then permit authority devolves
23 upon the local government to issue permits in accordance
24 with its local coastal program. That's not at issue in
25 this case at all.

1 We're dealing with the second type of
2 permitting, which is by the Coastal Commission itself,
3 not a local government. The Coastal Commission is the
4 party involved here, not the County of Monterey. And
5 what's being enforced is the Coastal Act itself, not the
6 Monterey land use plan.

7 The Coastal Act has a number of environmental
8 performance standards in chapter 3 of the Act, and the
9 Coastal Commission issues permits based upon compliance
10 with the environmental criteria in the Coastal Act
11 itself.

12 So I think there's a misconception here as to
13 what the permitting process is. We're not dealing with
14 a local government issuing permits in accordance with
15 the local land use plan.

16 Secondly, the Coastal Act is not enforced, as
17 I tried to indicate earlier, solely through the coastal
18 zone management program. It's an independent statute.
19 It was enacted in 1976. Federal approval came in 1977.
20 The state was enforcing that act wholly apart from the
21 CZMA program.

22 And if you took, for example, the assumption
23 that the state pulls out of the Coastal Zone Management
24 Act system -- that's a voluntary system. The state can
25 withdraw from it at any time. If we pulled out of that

1 system, this statute wouldn't collapse, the Coastal
2 Commission wouldn't go out of business. It would be
3 enforcing this as a state statute.

4 So I think the Solicitor General's attempt to
5 tie this statute into the CZMA and say that's the only
6 existence to this statute is basically incorrect.

7 Now, in addition the argument is made that the
8 state is bound by the federal rules under the CZMA and
9 that we therefore have to enforce this statute in
10 accordance with the CZMA rules. But one of the federal
11 CZMA regulations is 923.33(c)(2) at 15 Code of Federal
12 Regulations.

13 And that very provision, which was adopted by
14 the federal government, tells states that in excluding
15 federal lands for purposes of the coastal zone
16 management program they retain their police power
17 authority over those federal lands. And so we don't
18 believe that California has violated the terms of the
19 CZMA program.

20 We've simply availed ourselves of the right to
21 apply our police power to federal lands. That's
22 something that the federal government has expressly
23 noted, that we have that authority.

24 QUESTION: Is that regulation in your brief?

25 MR. MASOUREDIS: Yes, it is.

1 There was a question raised about the Forest
2 Service regulations and about the reference to
3 compliance with state permits. That is in the actual
4 Forest Service decision in this case. It's not in the
5 regulations.

6 But the regulations do point out that state
7 approvals and certifications will be accepted as
8 compliance with parallel requirements of the Forest
9 Service regulations. And that's Section 228.8(h), and
10 that section is based on the assumption -- I see that my
11 time is expired.

12 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
13 Masouredis.

14 The case is submitted.

15 (Whereupon, at 12:00 noon, oral argument in
16 the above-entitled case was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#85-1200 - CALIFORNIA COASTAL COMMISSION, ET AL., Appellants.V.

GRANITE ROCK COMPANY

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)