

## Santa Fe County Oil and Gas Ordinance and Federal Preemption

We have reread the leading case on federal preemption of local ordinances on federal lands and believe that there is little ground for a facial challenge.

In *Cal. Coastal Com v. Granite Rock Co.*, 480 U.S. 572 (1987), the U.S. Supreme Court made it clear, once again, that "the State is free to enforce its criminal and civil laws" on federal land so long as those laws do not conflict with federal law. Although the Court held that a combination of the National Forest Management Act (NFMA) and the Federal Land Policy Management Act (FLPMA) preempted local "land use plans" from being extended to federal lands, the "environmental regulations" at issue were not land use plans, because they did not ban or prescribe any particular use of land. Accordingly, on its face, the SF Ordinance is not preempted, because it does not ban oil and gas drilling, but will instead regulate drilling through a county permitting process. Moreover, even if the application of the rule makes oil and gas drilling so expensive as to be prohibitive in a particular case, there should still be no preemption, because the ordinance itself provides a remedy in the beneficial use and takings determination section.

Accordingly, we think there is little danger that the ordinance, on its face, will be preempted by any federal laws applicable federal lands.

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