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Recent Case Decisions

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All case citations are as of 7-7-2015. The citations provided in this Case Report do not reflect changes made by Lexis or Westlaw, or the case's addition to a case reporter after that date. This Case Report contains case decisions issued through 7-7-2015. This PDF version of the Case Report is word-searchable. If you have any suggestions for improving the Case Report, please e-mail the editorial staff at ou.mineral.law@gmail.com.

Federal

3rd Circuit

Harrison v. Cabot Oil & Gas Corp., 2015 WL 3895209, No. 12-3613 (3rd Cir. 2015).

Oil and Gas Lessors brought action against Lessee, seeking a declaration that the lease was invalid due to fraudulent inducement. Lessee counterclaimed for an equitable extension of the lease. The District Court granted summary judgment in favor of Lessee validating the lease, but entered judgment in favor of Lessor regarding the equitable extension counterclaim. The Lessee appealed the equitable extension judgment. The Supreme Court of Pennsylvania held that an oil and gas Lessor's pursuit of declaratory relief to invalidate a lease does not result in repudiation of the lease, and as a result, does not entitle Lessee to equitable extension of the primary term.

5th Circuit

Contango Operators, Inc. v. Weeks Marine, Inc., 2015 WL 3407402, No. 14-20265 (5th Cir. 2015).

Weeks Marine and the United States appealed a judgment holding them 40% and 60% liable, respectively, for damages to Contango. Contango suffered as a result of a dredging accident. The accident occurred as a result of Weeks' failure to locate a pipeline installed by Contango prior to dredging off the coast of Louisiana. The District Court held that Weeks was liable for breaching its duty of reasonable care by relying solely on specifications that did not show the pipeline in question. The United States challenged the findings solely on the issue of whether or not an exculpatory clause in Contango's pipeline permit precludes holding it liable. The Fifth Circuit held that the District Court did not err in finding Weeks 40% liable because the risk of causing the damage substantially outweighed downloading new, updated maps of pipeline locations. The court declined to review the exculpatory clause.

8th Circuit

Shields v. Wilkinson, 2015 WL 3634541, No. 13-3773 (8th Cir. 2015).

Indian landowners allotted by the United States under the Dawes Act of 1887, and currently held in trust by the United States government, brought suit against oil and gas lessee's for aiding, abetting, and inducing the United States into breaching its fiduciary duty as trustee. The District Court dismissed the action after determining that the United States government was a required party and that the action could not proceed because sovereign immunity barred the United States from being joined. The Appellate Court affirmed.

10th Circuit

Pueblo of Jemez v. U.S., 2015 WL 3916572, No. 13-2181 (10th Cir. 2015).

The Pueblo of Jemez brought suit against the United States under federal common law and the Quiet Title Act (QTA), seeking to quiet aboriginal title to the lands in question. The government filed a motion to dismiss for lack of jurisdiction and for failure to state a claim. The District Court dismissed the action, and found that the Pueblo's claim lacked subject matter jurisdiction due to sovereign immunity. Under the Indian Claims Commission Act (ICCA), the federal government waived the right to sovereign immunity; however, all claims accruing before 1946 were subject to a five-year statute of limitations. The District Court determined the Pueblo's claim arose in 1860, and therefore had no cause of action. On appeal, the Court reversed and remanded for further proceedings. The Court found in favor of the Pueblo and held that the Pueblo's claim to aboriginal title was not extinguished by a land grant or subsequent conveyances.

District of Columbia

Noble Energy, Inc. v. Jewell, 2015 WL 3544371, CV No. 14-898 (CKK) (D.D.C. 2015).

In 1985, Noble Energy temporarily plugged a well off the coast of California with the intentions to ultimately recomplete or permanently plug the well. In the interim, Noble's lease was indefinitely suspended; leaving Noble unable to recomplete or permanently plug the well. Lease termination was revoked in the Court of Appeals, and the government was found in breach of its lease agreement. Despite the ruling, the government then ordered Noble to permanently plug the well, and Noble subsequently challenged the order. On review, the Court granted summary judgment in favor of the government and held the discharge doctrine does not relieve an operator of regulatory obligations even when the government was in material breach of the instrument

under which the obligations arose.

Hermes Consol., LLC v. E.P.A., 787 F.3d 568 (D.C. Cir. 2015).

Hermes, an oil refining company, sought judicial review of the EPA's denial of its petition for extension of its economic hardship exemption from the EPA's renewable fuels program. Per the 2005 Clean Air Act amendment, the EPA administers a renewable fuels program under which oil refineries must satisfy annual obligations concerning production of renewable fuels. Hermes had obtained an exemption through 2012, however, it unsuccessfully petitioned for an extension through 2014. The dispute arose out of the EPA's interpretation of the term "disproportionate economic hardship." After the 2005 Amendment, Congress was aware that small refineries would face greater difficulty complying with the renewable fuels requirements. Congress created a three-tiered system of exemption to afford small refineries a bridge to compliance. An exemption is allowed if a petitioner shows a disproportionate economic hardship encompassing: (1) a high cost of compliance relative to the industry average and (2) an effect sufficient to cause a significant impairment of the refinery operations. The Court of Appeals held that the EPA's method of evaluating the "disproportionate economic hardship" was based on a permissible construction of the statute.

State

Kansas

Fawcett v. Oil Producers, Inc. of Kansas, No. 108,666, 2015 WL 4033549 (Kan. 2015).

Operator entered into a third-party gas purchase agreement, under which certain post-production costs were deducted from the price paid to the Operator. Royalties paid to Lessors were based upon the price ultimately paid to Operator. Lessors filed suit, arguing that the post-production costs were the sole responsibility of Operator under the marketable condition rule, which requires operators to make gas marketable at their own expense. The District Court granted summary judgment for Lessors, and the Court of Appeals affirmed. The Supreme Court of Kansas reversed and remanded the case for further proceedings, holding that Operator is not obligated as a matter of law under the marketable condition rule to bear post-production costs that may be necessarily incurred to convert raw gas into the quality required to enter interstate pipelines.

Missouri

In Matter of Verified Application and Petition of Liberty Energy (Midstates) Corp., No. SC 94470, 2015 WL 3759566 (Mo. 2015).

Liberty Energy Corporation, a provider of natural gas and transportation services, filed a petition with the Public Service Commission seeking an adjustment of its rate schedule and seeking reimbursement for its infrastructure replacement costs. Public Counsel filed a motion in response to this petition and an evidentiary hearing was held. The Commission approved the rate increase and the Court of Appeals affirmed the lower court's decision. The Supreme Court of Missouri granted a transfer. The Court determined, under the relevant statute, the damage caused by a contractor or another third party was not an infrastructure replacement that allowed for a recovery of costs.

Ohio

Dodd v. Croskey, No.2013-1730, 2015 WL 3773491 (Ohio 2015).

Surface Owners published a notice of abandonment concerning the minerals underlying their property. Surface Owners sought to quiet title to the underlying mineral estate of a Mineral Interest Owner by asserting an abandonment claim. A Mineral Interest Owner filed an affidavit stating his intent to preserve his mineral interest. The lower court granted summary judgment in favor of the Mineral Interest Owners. The Court of Appeals affirmed. Surface Owners sought discretionary appeal contending that there was no valid saving event during the Dormant Mineral Act's 20-year window prior to the surface owner's notice of intent to declare abandonment. The Supreme Court of Ohio held that a claim to preserve a mineral interest filed within 60 days of notice of intent to declare a mineral interest abandoned was sufficient to preserve an interest to the minerals.

Oklahoma

Ladra v. New Dominion, LLC, No. 113396, 2015 WL 3982748 (Okla. 2015).

Property Owner filed a private tort action in District Court against Operators, alleging that Operators' wastewater disposal practices caused an earthquake, which proximately caused Property Owner's personal injuries. The District Court granted Operators' motion to dismiss for lack of jurisdiction, finding that the Oklahoma Corporation Commission (OCC) has exclusive jurisdiction over oil and gas operations.

The Supreme Court of Oklahoma reversed and remanded, holding that "district courts have exclusive jurisdiction over private tort actions when regulated oil and gas operations are at issue."

Texas

Anderson Energy Corp. v. Dominion Oklahoma Exploration & Production, Inc., No. 04-14-00170-CV, 2015 WL 3956212 (Tex. App. 2015).

Anderson and Dominion's predecessors-in-interest entered into a Joint Operating Agreement (JOA), which included an area of mutual interest (AMI) clause and a first right of refusal clause. Dominion acquired interests in the AMI without notifying Anderson, and Anderson filed suit for breach of contract. The District Court granted Dominion's motion for summary judgment, finding that the "Contract Area" was limited to the interests owned by the predecessors when they entered into the JOA, and that the JOA was terminable at will because the predecessors did not select a term for the JOA. The Court of Appeals reversed and remanded the case for further proceedings, holding that, as a matter of law, the "Contract Area" includes interests subsequently acquired by the parties and their successors, and that the JOA is effective for a reasonable time period.

Medina Interests, Ltd. v. Trial, No. 04-14-00521, 2015 WL 3895902 (Tex. App. 2015).

Appellee's ancestor conveyed a multiple-acre tract to two of her sons reserving an "undivided interest in and to the 1/8 royalties paid the landowner upon production" that vested in her other six children. Medina Interests, Ltd. is the successor-in-interest to the two sons who received the initial conveyance. Appellees are the successors-in-interest to each of the six children named in the deed. On appeal, the Court addressed an issue of interpretation of the 1949 deed determining whether the reserved undivided interest was a fixed or floating royalty. The Court analyzed the document in its entirety to determine that a floating royalty was reserved, thereby affirming the judgment below.

Chesapeake Exploration, L.L.C and Chesapeake Operating, Inc. v. Hyder, 58 Tex. Sup. Ct. J. 1182, 2015 WL 3653446 (Tex. 2015).

Lessors brought a claim for breach of contract against Chesapeake Exploration, L.L.C. claiming that Chesapeake wrongfully deducted post-production costs from the Lessor's royalties as well as over-riding royalties despite an express clause prohibiting such deductions. In 2004, the Hyder family executed an oil and gas lease providing the Hyder family with a 25% royalty of gas produced and sold or used from the leased premises free and clear of all production and post-production costs and expenses. Chesapeake claimed that they were entitled to deduct post-production costs since their proceeds from the third party gatherer were less post-production costs. At a bench trial, the Court entered a judgment for the Hyder family and found that Chesapeake wrongfully deducted post-production costs. The decision was affirmed by the Appellate Court and ultimately reviewed by the Texas Supreme Court. The Supreme Court held that Operators must carry post-production costs when a royalty is based on the proceeds of a sale.

Wisconsin

Oneida Seven Generations Corp. v. City of Green Bay, 2015 WL 3419634, No. 2013AP591 (Wis. 2015).

Oneida Seven sought review of the City of Green Bay's decision to rescind a conditional use permit for a renewable energy facility. Oneida Seven proposed a renewable energy facility that would take municipal solid waste and turn it into energy via a pyrolytic gasification system. Although the City initially voted to grant the permit, it subsequently voted to rescind the conditional use permit on the basis that it was obtained through misrepresentation. Oneida Seven sought review from the Circuit Court while asserting that the City's decision to rescind its conditional use permit was arbitrary and not supported by substantial evidence. The lower court rejected Oneida Seven's arguments. On appeal, the Court of Appeals agreed with Oneida Seven, describing the City's actions as "[f]ickle and inconstant." On certiorari, the Supreme Court of Wisconsin determined that the City's decision to rescind the conditional use permit was not based on substantial evidence because the City could not reasonably conclude that the statements by Oneida Seven's representative to the City government regarding the proposed facility's emissions and hazardous materials, its stacks, and its technology were misrepresentations.

Wyoming

Clay v. Mountain Valley Mineral Ltd. Partnership, 2015 WY 84, 2015 WL 3623597 (Wyo. 2015).

Mountain Valley brought a declaratory action to settle its claim to an undivided 80% mineral interest. Mountain Valley claimed that it acquired the mineral

interest from a default judgment obtained by its predecessors in title. In 1976, Mountain Valley's predecessors, record surface owners, brought a quiet title action seeking to bar any claim to title from various record mineral owners, and obtained a judgment after the record mineral owners, the Clays failed to respond to the action. The Clays argued that the default judgment only applied to the surface since the Mountain Valley's predecessor had no mineral interest of record. However, the District Court held that the judgment was for fee simple title, and therefore the Clays' claim would be barred indefinitely. On appeal, the Supreme Court of Wyoming affirmed the District Court, and held that the 1976 quiet title action constituted an adverse possession of minerals and the default judgment obtained against the Clays barred the claim under *res judicata.*

Federal

9th Circuit

Bear Valley Mut. Water Co. v. Jewell, No. 12-57297, 2015 WL 3894308 (9th Cir. 2015).

The United States Fish and Wildlife Service (FWS) revised the critical habitat designation of the Santa Anna Sucker to include previously excluded land. Several municipalities and water districts filed suit against the FWS claiming there was no cooperation with the state, the FWS acted arbitrarily and capriciously, and that the FWS violated the National Environmental Policy Act. The District Court granted summary judgment in favor of the FWS. The Court of Appeals affirmed the lower court's decision and held that the FWS acted within its discretion because it may exclude any area from a critical habitat if it determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the failure to designate such an area as a critical habitat will result in the extinction of the species concerned.

State

Colorado

St. Jude's Co. v. Roaring Fork Club, LLC, No. 13SA132, 2015 WL 3947114 (Colo. 2015).

Private Club filed claims to water under Colorado's prior appropriation system for "aesthetic, recreation, and piscatorial uses." Downstream Agricultural Company objected to Club's claims and filed a separate action alleging that Club violated the terms of a prior settlement agreement by denying Company access to water on Club's property. The Water Court consolidated the parties' claims, granted appropriative rights to Club for the proposed uses, denied all but one of Company's claims, and awarded attorney's fees to Club pursuant to the terms of the prior settlement agreement. The Colorado Supreme Court reversed in part, holding that the Club's diversion of water was not a "beneficial use" as required by Colorado's prior appropriation system. The Colorado Supreme Court affirmed in part, holding that the evidence supported the Water Court's interpretation of the prior settlement agreement.

San Antonio, Los Pinos and Conejos River Acequia Preservation Association v. Special Improvement District No. 1 of the Rio Grande Water Conservation District, 2015 CO 52, 2015 WL 3947117 (Colo. 2015).

The Special Improvement District No. 1 (Subdistrict) filed its 2012 Annual Replacement Plan (ARP) with the Water Division, and subsequently submitted the ARP to the State Engineer for review and approval. Objectors challenged the approval of the 2012 ARP under the Water Court's retained jurisdiction. The Water Court upheld its initial ruling of validity of the ARP. On appeal, the Supreme Court of Colorado affirmed the Water Division's decision as well as denying the notion that a stay on operations of an ARP must be enforced until all challenges are resolved. The ARP inclusions of replacement water for aquifer depletion were found to be adequate to prevent injury to senior surface water rights. The inclusion of augmentation plan wells as Subdistrict wells for the purpose of calculating total groundwater depletions were also deemed to be an appropriate action.

Concerning the Application for Water Rights of Tidd, 349 P.3d 259, 2015 CO 39 (Colo. 2015).

Servient Tenement Owners brought action against Dominant Tenement Owners for declaratory judgment and a conditional water right decree regarding use of a water ditch. The District Court issued a declaratory judgment and a conditional water right decree for the Servient Tenement Owners, and the Dominant Tenement Owners appealed. The Servient Tenement Owner had an easement going across its property for a water ditch and sought to obtain conditional water rights at the ditch headgate for a non-consumptive hydropower use of the water that was being diverted for irrigation use. Upon first impression, the Supreme Court of Colorado affirmed, holding that small-scale hydropower projects benefit the public because they offer an alternative source of energy that has generally minimal environmental impacts, diverts less water, is less susceptible to storm damage, and does not require the creation of dams because they rely on existing infrastructure from the water ditch.

Texas

Harris County Flood Control District v. Kerr, 58 Tex. Sup. Ct. J. 1085, 2015 WL 3641517 (Tex. 2015).

Neighborhood developments were built in the 1970s and early 1980s with little or no flood damage occurring. Further development in the watershed without additional safeguards resulted in flood damage after several tropical storms occurred between the 1990s to the 2000s in the area. Landowners and former landowners whose properties were damaged by the tropical flooding brought suit for inverse condemnation and nuisance against the county and flood control district. On appeal from the Houston Court of Appeals, the Supreme Court of Texas concluded that a question of fact exists to each element of the homeowners' taking claim and that the government entities' jurisdiction pleas should be denied.

Federal

9th Circuit

National Parks Conservation Ass'n v. E.P.A., 2015 WL 3559149 (9th Cir. 2015).

Pursuant to the Clean Air Act (CAA), when a state fails to develop a State Implementation Program (SIP) to reduce regional haze, the EPA must implement a Federal Implementation Program (FIP). In 2006, the State of Montana notified the EPA that it would not develop a SIP. Subsequently, the EPA proposed a FIP for the State of Montana. The Program required the Montana PPL (MPPL) implement new technologies to reduce emissions in order to eliminate regional haze. MPPL challenged the program and claimed the EPA failed to justify the proposed requirements. The National Parks Conservation Association (NPCA) also challenged the FIP and claimed the proposal failed to provide reasoning for its lenient determinations. Despite these objections, the EPA issued a final rule. After the MPPL and the NPCA petitioned for review, the Appellate Court found that the EPA's findings were arbitrary and capricious and held that the EPA failed to justify or explain its determinations as required under the CAA.

District of Columbia

Mississippi Com'n on Environmental Quality v. E.P.A., 2015 WL 3461262 (D.C. 2015).

The EPA is required to promulgate National Ambient Air Quality Standards (NAAQS). After the EPA sets the NAAQS, it must determine compliance and maximum level of pollutant concentrations in the atmosphere. In 2008, the EPA set and promulgated new primary and secondary NAAQS for ambient zones and, over the last seven years, the EPA has collaborated with petitioners over area-designations. Several companies, environmental groups, counties, and states petitioned for review of the EPA's determination that certain geographic areas were designated as not attaining EPA's ground-level ozone NAAQS. The Court of Appeals held that the EPA's interpretation of the Clean Air Act, determination of NAAQS, and designation of the attainment areas was not arbitrary or capricious.

State

Michigan

Johnson v. Department of Natural Resources, 2015 WL 3476408 (Mich. Ct. App. 2015)

Plaintiff owns hunting ranch Bear Mountain, L.L.C., where customers pay a fee to "harvest" Russian boars. Russian boars are not native to Michigan and have been deemed by the U.S. Department of Agriculture as an environmental danger to both humans and livestock. In response to a growing problem of wild hog overpopulation, the Michigan Department of Natural Resources (DNR) issued the Invasive Species Order Amendment No. 1 (ISO) which outlawed the possession of certain species of swine, including the Russian boar. Michigan DNR has appealed the lower court's judgment that the ISO was unconstitutional on due process grounds as well as being void for vagueness. The Court of Appeals of Michigan reversed, holding that, "as a regulatory action that does not implicate fundamental rights, the ISO is subject to rational-basis review." Using that standard, the Court found that the ISO was rationally related to the protection and welfare of the citizens of Michigan.

South Dakota

Grant County Concerned Citizens v. Grant County Bd. of Adjustment, 2015 S.D. 54, 2015 WL 3898080 (S.D. 2015).

The Grant County Board of Adjustment approved Limited Liability Company (LLC) for a conditional use permit to construct a concentrated animal feeding operation. Concerned Citizen's Coalition and Landowner sought judicial review of the Board's decision. The Circuit Court affirmed the County Board's decision. On appeal, the Supreme Court of South Dakota determined the Coalition's due process rights were not violated and held that the board properly exercised its authority in granting the application, and that the Coalition failed to show that the Board had relied on fraudulent information in granting the application.

OIL AND GAS

Alexander Bukac, *Fracking and the Public Trust Doctrine: This Land is Their Land, But After Robinson, Might This Land Really Be Our Land?*, 49 U.S.F. L. Rev. 361 (2015).

Harvey Reiter, *Removing Unconstitutional Barriers to Out-of-State and Foreign Competition from State Renewable Portfolio Standards: Why the Dormant Commerce Clause Provides Important Protection for Consumers and Environmentalists*, 36 Energy L. J. 45 (2015).

S. Scott Gaille, *How Can Governments Accelerate International Shale Development?*, 36 Energy L. J. 95 (2015).

Hillary Hellmann, *Acknowledging the Threat: Securing United States Pipeline Scada Systems*, 36 Energy L. J. 157 (2015).

AGRICULTURE

Sandy Manche, *Maintaining the Highway Infrastructure as Alternative Fuel Vehicle Usage Increases*, 7 Ky. J. Equine, Agric. & Nat. Resources L. 515 (2014-2015).

For a more complete list of articles related to agricultural law, please consult the Agricultural Law Bibliography of the National Agricultural Law Center, http://www.nationalaglawcenter.org/reporter/caseindexes/. This bibliography is updated quarterly and provides a comprehensive listing of agricultural law articles.