Oil and Gas, Natural Resources, and Energy Journal

Volume 1 | Number 4

January 2015

Recent Case Decisions

Daniel Franklin
dfranklin@ou.edu

Jordan Volino
jvolino1@ou.edu

John Curtis
john.curtis@ou.edu

Patrick J. Hoog
Patrick.J.Hoog-1@ou.edu

Jarrod H. Gamble
Jarrod.H.Gamble-1@ou.edu

See next page for additional authors

Recent Case Decisions

Authors
Daniel Franklin, Jordan Volino, John Curtis, Patrick J. Hoog, Jarrod H. Gamble, and Taylor C. Venus

Oklahoma Oil and Gas, Natural Resources, and Energy Journal
RECENT CASE DECISIONS

VOL. I, NO. IV NOVEMBER, 2015

TABLE OF CONTENTS

All case citations are as of 10-11-2015. 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 10-11-2015. 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 onej@ou.edu.

Federal

9th Circuit

Montana Environmental Information Center v. United States Bureau of Land Management, 615 Fed. Appx. 431 (Mem), 2015 WL 5093001, No. 13-35688 (9th Cir. 2015).

Environmental Information Center (Center) appealed from a lower court's grant of summary judgment against them in suit against United States Department of Interior's Bureau of Land Management's (BLM) decision to sell oil and gas leases in Montana on the grounds that the Center did not show a concrete and redressable injury sufficient to establish standing. On appeal, the United States Court of Appeals emphasized to establish standing, the Center must show that it: (1) was under an actual or imminent threat of suffering a concrete and particularized injury, (2) which is fairly traceable to the challenged action, and (3) which is likely to be prevented or redressed by a favorable judicial decision. The Appellate Court held that the lower court erred by failing to consider surface harms caused by development of the challenged leases and instead focused only on the climate-change effects, and that recreation and aesthetic interests asserted by the Center may establish actual injury, thus remanding the case back to the lower court.

10th Circuit

Whisenant v. Sheridan Production Co., LLC, 2015 WL 5828205, No. 15-6154 (10th Cir. 2015).

Royalty Interest Owner (Owner) filed a class action in state court alleging that Oil and Gas Company (Company) failed to pay or underpaid royalties for natural gas wells in Beaver County, Oklahoma. Company removed the case to federal court under the Class Action Fairness Act of 2005 (CAFA). The lower court denied Owner's motion to remand. CAFA gives federal courts jurisdiction when the class exceeds 100 members and amount in controversy exceeds $5 million. The lower court found that the alleged unpaid royalties Company owed amounted to $3,721,797. The lower court additionally found that pursuant to Oklahoma's Production Revenue Standards Act (PRSA), a 12% *per anum* interest should be applied to the unpaid royalties, which amounted to $1,512,869. Combined, the amount in controversy exceeded the $5 million dollar minimum to remove the case to federal court. The Tenth Circuit held that the lower court erred in considering the PRSA statutory interest in determining the amount in controversy. The lower court therefore granted Owner's motion to remand.

U.S. Court of Appeals, District of Columbia

Sierra Club v. United States Army Corps of Engineers, 2015 WL 5692095, No. 14–5205 (D.C. Cir. 2015).

Environmental Advocacy Organization (Organization) brought suit against Federal Agencies (Agencies) involved in authorizing aspects of a pipeline project. Organization alleges that the Agencies failed to conduct a National Environmental Policy Act (NEPA) analysis of environmental impacts related to the construction of the entire pipeline. Almost all of the land over which the pipeline is constructed is privately owned, but approval from the Army Corps of Engineers (Corps) was required because the pipeline encompassed nearly 2000 minor water crossings subject to Corp's general permitting authority under the Clean Water Act (CWA). The lower court granted summary judgment in favor of Agencies. The Court of Appeals held that the federal government is not required to conduct NEPA analysis of the entirety of the pipeline project. Additionally, the Court found that the Agencies' regulatory review was limited to discrete geographical segments of the pipeline comprising less than five percent of its overall length.

United States Court of Federal Claims

Rocky Mountain Helium, LLC v. United States, No. 15-336 C, 2015 WL 5730672 (2015).

A Helium Extraction Company (Company) and the United States Department of Interior's Bureau of Land Management (BLM) entered into a contract to conserve and extract the helium produced from oil and gas wells in western Colorado. Within two years, Company was in default for non-payment of rent. However, both the Company and the BLM continued their working relationship through contract modifications and settlement agreements until 2009, when the BLM invoked a Sunset Provision of one of the agreements and fully and permanently terminated the contract, resulting in an action by Company filed in the United States Court of Federal Claims. After jurisdiction was established, the Court held that since the first two modifications of the contract between Company and the BLM were inoperative, the Court

had to rely on the initial contract and the final settlement agreement. Upon review of the contract and settlement agreement, the Court found that because the Company was in default, the Company had no standing to bring an action because the conditions precedent to reinstating the contract were never satisfied. As such, the BLM could not have breached the contract and the Company could not state a claim upon which relief could be granted.

Barlow & Haun, Inc. v. United States, 2015 WL 5894165, No. 2015-5028 (2015).

Oil and Gas Lessees filed suit against the United States, as Lessor, claiming a Fifth Amendment taking without just compensation and breach of contract. Lessees' claims arise from alleged indefinite suspension of oil and gas operations by United States Department of Interior's Bureau of Land Management (BLM) in a known sodium leasing area (KSLA) and mechanically mineable trona area (MMTA) in Wyoming. The United States Court of Federal Claims granted judgment for the United States, which Lessees appealed. The Appellate Court held that: (1) the government did not repudiate the lease, (2) the government did not breach leases by subsequently imposing conditions that protected worker safety, (3) regulatory takings claim was not ripe for review, (4) futility exception to ripeness requirement did not apply, (5) the BLM did not make decisions with respect to specific property rights, therefore the claim was not ripe for adjudication, and (6) other entities were not in privity with the government.

State

Louisiana

NorAm Drilling Co. v. E & Pco Intern., LLC, 2015 WL 5714571 (La. App. Ct. 2015).

Operator entered into a daywork contract with Drilling Company for use of a rig to drill for coalbed methane in Louisiana. Since Operator did not have adequate funding, Drilling Company included an escrow clause in the contract. Until Operator attained funding, they were to pay Drilling Company day rates to keeps the rig on standby. Through various email exchanges, the parties agreed to place a second rig on standby as well as agreeing that the daywork contract was in full force. Operator never paid Drilling Company and upon receiving funding, used a different contractor. Drilling Company filed suit seeking monetary damages. The lower court found in favor of the Drilling Company. Affirming the lower court, the Appellate Court held that the escrow clause did not form a condition precedent, and if it did, the party it benefitted could waive it. Throughout the parties' communication, Drilling Company's conduct showed that it was willing to move forward without the protection of the escrow clause. The Appellate Court also noted that the subsequent emails did not changed the contract, just modified the day rate, effective start date, and the choice of rig.

Minnesota

In re North Dakota Pipeline Co. LLC, 869 N.W.2d 693 (Minn. Ct. App. 2015).

When a Minnesota Utilities Commission sought to issue a certificate of need prior to completing an environmental impact statement, the Minnesota Court of Appeals found the action violated state environmental policy. An Organization sought reconsideration following the Minnesota Public Utilities Commission's (MPUC) order to conduct certificate of need proceedings prior to completion of environmental impact statements. When MPUC denied Organization's petition for reconsideration, Organization appealed. Approaching the case as a matter of Minnesota Environmental Policy Act (MEPA) interpretation, the Appellate Court found that the plain language of MEPA was unambiguous in that a final government decision must follow an environmental impact statement. The Appellate Court reasoned that completing environmental impact statements prior to final government decisions would directly further MEPA interests in accurately assessing the situation and ensuring that important environmental effects would not be overlooked. The Appellate Court, therefore, held that MPUC erred by not completing an environmental impact statement at the certificate of need stage. Because MEPA requires environmental impact statements before a final government decision, the Appellate Court reversed the lower court's decision and remanded the case for procedural compliance.

Ohio

MAR Oil Co. v. Korpan, 2015 WL 5732059 (N.D. Ohio 2015).

Oil and Gas Exploration Company (Company) brought suit against one of its former Landmen and two of its Competitors. The former Landman of the Company went to work for two of the Competitors. The Company alleged that the former Landman misappropriated confidential and proprietary information, including seismic data, which the Landman obtained while working for the Company in violation of the Ohio Uniform Trade Secrets Act

(OUTSA). Competitors used that information to lease land and acquire minerals in Northwest Ohio, where Company's operations were located. Competitors filed post-trial motions for reformation of punitive damages. The District Court denied their motions and held that the OUTSA punitive damages provision supersedes Ohio's general punitive damages statute, and that the OUTSA permits treble damages. The District Court held that the Competitors were vicariously liable because the former Landman disclosed Company's proprietary data in the ordinary course of Competitors' business.

Pennsylvania

Seneca Resources Corp. v. S & T Bank, 2015 WL 5093501, 2015 PA Super 181 (2015).

Energy Company acquired interest in a lease which granted the lessee the right to produce, withdraw, store, or transport oil or gas from the leased premises that included 10,000 acres of undeveloped land and 15,000 acres of developed land. Trustees, who owned the mineral interest in the collective acreage, notified Energy Company that its failure to develop on the undeveloped acreage constituted a breach of the implied covenant to produce. The lower court held in favor of Energy Company, finding that the land covered under the lease was not severable based on a portion of it being "undeveloped" and the other portion being "developed." In addition, the lower court held that Energy Company did not violate Pennsylvania's doctrine of implied covenant to develop because the developed portion of the lease was already being operated before Energy Company acquired their interest. The Superior Court of Pennsylvania upheld the lower court's findings due to the language of the lease, which indicated that Energy Company had a fee simple determinable of the entire leasehold, past the primary term, as long as it produced oil or gas in paying quantities. The Superior Court also affirmed the lower court's finding that Energy Company did not violate an implied covenant to develop.

Texas

Cerny v. Marathon Oil Corp., 2015 WL 5852596, No. 04-14-00650-CV (Tex. App. 2015).

Landowner sued an Oil and Gas Corporation and a Mineral Exploration and Production Company (Companies) for private nuisance and negligence claims for toxic emissions from oil and gas operations near their home, causing damage to their health and property. The lower court granted Companies' summary judgment motion. On appeal, the Appellate Court held that the general rule is that an expert's testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience of a lay person, but an expert's failure to rule out alternative causes on injury renders the opinion unreliable, and legally constitutes no evidence. The Appellate Court held that the evidence did not amount to more than a scintilla of evidence linking Companies as the proximate cause of the conditions that substantially interfered with the Landowner's use and enjoyment of their property. Therefore, the lower court did not err in granting a no-evidence summary judgment in favor of the Companies.

Kachina Pipeline Co., Inc. v. Lillis, 2015 WL 5889109, No. 13-0596 (Tex. 2015).

Seller of natural gas brought action against Purchaser for fraud as well as to seek an accounting and declaration that Purchaser was in breach of their contract. The lower court granted Purchaser's no-evidence motion for partial summary judgment on the fraud claim and a motion for traditional partial summary judgment on the declarations Purchaser sought. The Appellate Court affirmed in part, reversed in part, and remanded. Purchaser petitioned the Supreme Court of Texas for review. The Texas Supreme Court affirmed the Appellate Court's decision and held that the contract provision authorizing deduction of costs to install compression to effect "delivery" of Seller's gas applied only to compression required to overcome working pressure in Purchaser's system, as well as noting that the contract did not include option for five-year extension.

State

Montana

Sharbano v. Cole, 355 P.3d 782, 2015 WL 5132038 (Mont. 2015).

Landowner held water rights superior to that of his Neighbor. Such water arises on the Neighbor's property and flows or seeps into a pond on Landowner's property. In 2007, 13 years after Neighbor acquired his water rights, Neighbor began development and construction, which the Landowner contends reduced or eliminated the flow of water to Landowner's property resulting in an inability for Landowner to utilize his senior water right. Landowner brought an action seeking damages and an order for restoration of natural water flow against Neighbor for interfering with Landowner's water right by erection of a pond and other significant construction activities. The lower court granted Neighbor's motion for a verdict in their favor, and the Neighbor's motion in limine due to lack of compliance to a procedural rule. The Supreme Court of Montana reversed and remanded, stating the Landowner complied with the procedural rule and disclosed adequate information regarding the facts of each claim as well as the grounds for each expert's testimony.

Gateway Village, LLC v. Montana Dept. of Environmental Quality, 2015 WL 5714594 (Mont. 2015).

The District proposed a treatment system that would discharge up to 500,000 gallons of treated wastewater each day into an underground zone underneath property owned by Landowner. The Department of Environmental Quality (DEQ) approved the District's proposal and issued a permit. Landowner alleged that this proposal would constitute a common law trespass considering the groundwater extended under their surface property. The lower court ruled that the use of the proposed mixing zone would constitute a trespass invading Landowner's rights. The lower court required the DEQ to prepare an Environmental Impact Statement (EIS). The Supreme Court of Montana declined to provide a ruling because the EIS would substantially change the record, thus making their ruling speculative. The Supreme Court of Montana also vacated the lower court's trespass holding stating the lower court should have declined to address the trespass claim.

Wyoming

In re The Adjudication of All Rights to Use Water in The Big Horn River System, 2015 WL 5439947 (Wyo. 2015).

Cattle Company held a state permit to water from a ditch on Landowner's property. The permit expired in 1963, however, it was never cancelled, but was rather routinely extended. A Wyoming regulation provides that "permits not in good standing could be reinstated . . . upon proof that lands have been properly irrigated . . . since date of expiration." A field inspection was conducted of Cattle Company's 207 acres, in which 52 acres showed evidence of beneficial use by irrigation. The Special Master recommended a permit for those 52 acres be reinstated. Landowner filed objections to Special Master's report and recommendation. The Supreme Court of Wyoming found proof of "continuous" beneficial use prior to 1963 up until the present based on testimony and aerial photographs, therefore affirming the Special Master's report and recommendation.

Federal

6th Circuit

Barks v. Silver Bait, LLC, 2015 WL 5751618, No. 15–5175 (6th Cir. 2015).

Former Employees brought this action against an Employer who operated a "worm farm," alleging the Employer violated the Fair Labor Standards Act (FLSA) by failing to pay Employees overtime. The Appellate Court affirmed the lower court and held that raising and growing worms for sale as fishing bait qualifies as "farming" under the FLSA's agricultural exemption; thus, the Employer did not have to pay overtime wages. The Appellate Court determined this after evaluation of the language of the FLSA, which does not entail an exhaustive list of possible farming exemptions, and congressional intent, which includes "embracing the whole field of agriculture."

United States Court of Federal Claims

Barlow v. United States, 123 Fed. Cl. 186, No. 13-396L, 2015 WL 5154931 (2015).

Landowners of property adjacent to railroad line subject to notice of interim trail use (NITU) brought a takings action against the United States, pursuant to the National Trail System Act. Parties cross-moved for partial summary judgment as to whether takings had occurred. The disputed lands included: (1) thirteen parcels conveyed by "right of way," (2) two parcels conveyed "for railroad purposes," (3) three parcels for which conveying instruments were not present, (4) one parcel acquired through condemnation, and (5) two parcels held by Landowners in fee simple. The court held that, under state law, the word "convey" created a rebuttable presumption indicating a conveyance of property in fee simple. Contrary to Landowners' contention, the phrases "right of way" and "for railroad purposes" were merely descriptive, not limiting in nature. The court granted United States' motion for summary judgment as to these fifteen parcels. Because Landowners only produced evidence of ownership of lands abutting those without a conveying instrument, the court granted summary judgment to United States as to these three parcels. The court denied summary judgment to both parties as to the parcels acquired through condemnation due to the genuine dispute as to whether the condemnation occurred before or after the adoption of the 1870 Illinois Constitution, which, after passage, subjected condemned lands "to the use for which it is taken." The court held in abeyance its determination of whether United States exceeded the scope of the easement by issuance of the NITU to the parcels held by Plaintiffs in fee simple.

Bell v. United States, 2015 WL 5455638, No. 13–455L (2015).

Multiple Landowners brought suit against the United States International Water and Boundary Commission (Commission). Landowners owned property along the Rio Grande River in southern Texas. The Commission owned easements permitting it to build flood control structures on the Landowners' property. The Commission built a thirteen-foot tall concrete barrier on the Landowners' property. The Landowners alleged that the structure was not a flood control device, but merely a border fence therefore falling outside the scope of the easement that the Commission possessed. The Commission contends that the structures fell within the scope of the easement and did not constitute a taking. The Landowners moved for their class to be certified. The Court of Federal Claims held that Landowners failed to meet the numerosity and superiority requirements for class certification, thereby denying their motion for certification.

State

Alaska

DeVilbiss v. Matanuska-Susitna Borough, 356 P.2d 290, No. S-15344 (Alaska 2015).

Following the Borough's denial of Property Owner's request to remove his property from the road service area, Property Owner filed a complaint against the Borough, contesting the validity of a road service tax. Property Owner claims that a property within a road service area, that does not make use of the roads built and maintained with the road service taxes levied on all real property, should be excluded from the service area and that the tax is invalid absent a special benefit to his property. The Superior Court rejected Property Owner's claims and granted the Borough summary judgment. The Supreme Court of Alaska held that the Borough was not required to exclude the Owner's property from the road service area and that the road service tax was not an invalid assessment. The Supreme Court reinforced the authorization of the Borough to provide special services within the road service area, allowing the levying of taxes to finance such services. Further, the Supreme Court held that

the validity of the tax does not depend on whether the taxpayer receives a special benefit.

California

People ex rel. Ross v. Raisin Valley Farms LLC, 193 Cal.Rptr.3d 246, 2015 WL 5762842 (Cal. Ct. App. 2015).

The California Raisin Industry sought approval from California's Department of Food and Agriculture (Department) of a marketing and research order (Order) to remedy its oversupply problems. Pursuant to the California Marketing Act of 1937 (Act), regulated growers subject to this Order are required to pay an assessment for related expenses. Affected Growers sued the Department for inconsistency with the Act. The lower court granted judgment for the Growers based on an interpretation of the CMA, which has its roots in the Great Depression, requiring evidence that the Order is "necessary to address adverse economic conditions" "so severe as to threaten the continued viability of the industry." The Appellate Court reversed, primarily based on a 1945 amendment to the Act, which distinguishes between orders that limit production of a commodity and those that do not limit production, such as the Order at issue. Orders that do not restrict supply must tend to effectuate the declared purposes and policies of the Act. The Appellate Court deferred to the explicit purposes and policies of the Act thereby enabling producers to correlate supply with demand, providing means for maintaining or growing markets, and restoring purchasing power to producers.

Florida

Teitelbaum v. South Florida Water Management Dist., 2015 WL 5714852, 40 Fla. L. Weekly D2234 (Fla. Dist. Ct. App. 2015).

Between 1971 and 2002, Landowners continuously purchased property near Bird Creek Basin, a swampy area in western Miami, hoping that the land would eventually be rezoned for commercial or residential usage. The Water District opposed all rezoning attempts, claiming that the land must be maintained as a flood plain. The Water District also attempted to purchase all the land in the area and passed a condemnation resolution in 2002 to acquire the Landowner's property by eminent domain. In 2008, the Water District withdrew their proposal to acquire the land. Despite a lack of interference with the Landowners' property, Landowners alleged that the Water District reduced the value of the land between 2002 and 2008 via their condemnation blight. The Appellate Court affirmed the lower court's conclusion that a condemnation blight was not a form of *de facto* takings and granted summary judgment in favor of the Water District.

Mississippi

Intrepid, Inc. v. Bennett, No. 2014-CA-00999-SCT, 2015 WL 5158397 (Miss. 2015).

Lessee leased two tracts of farmland from Lessor's predecessor in interest. Tract 1, the T.J. Carter Place (Carter), consisted of 836 acres. Tract 2, the Craigside Place (Craigside), consisted of 1,975 acres. The lease covered both tracts for a thirteen-year term and annual rental rates of $81,500 for Carter and $120,000 for Craigside, payable in semi-annual installments. The lease granted renewal options of five years provided that rental amounts are re-negotiated and may increase by the amount of increase in the preceding lease term of rent customary in the area for similar property. At the end of the initial term, Lessor offered to renew subject to increased rental rates of $146,300 for Carter and $286,375 for Craigside. Lessee hesitated and when Lessor refused Lessee's offer to have an arbitrator determine the rent, Lessee tendered the same rental payments it had in the previous lease term. Lessor refused such payments and declared the leases terminated. The Supreme Court of Mississippi affirmed the Circuit Court's determination that the renewal provision was void and unenforceable because it neither contained the essential element of price, nor a workable method for determining the price. The Supreme Court noted that although a court may supply reasonable terms, such as time for performance, essential terms such as price cannot be left as open-ended questions in contracts that anticipate some future agreement. The Supreme Court found further support for its decision in that the geographic area by which the increase should be measured was completely undefined.

North Carolina

House of Raeford Farms, Inc. v. N.C. Dept. of Environmental and Natural Resources, 774 S.E.2d 911, No. COA15-47 (N.C. Ct. App. 2015).

Operator of chicken processing facility (Operator) filed petition for judicial review from the Environmental Management Commission's decision imposing a $50,000 civil penalty against Operator for permitting waste to be discharged in violation of water quality standards and allowing settleable solids and sludge in excess of water quality standards. The Superior Court of Duplin County reduced the penalty

to a single $25,000 fine, to which the North Carolina Department of Environment and Natural Resources (DENR) appealed with Operator cross-appealing. Operator argued the Superior Court erred by allocating the burden of proof to Operator rather than DENR as well as concluding that Operator violated two state statutes. DENR argued that the Superior Court erred by reversing the Commission's decision upholding the $25,000 penalties, and also failed to defer to the Commission's decision upholding DENR's assessment of penalties. The Appellate Court made a number of findings including: (1) the burden of proof was correctly placed on Operator, (2) the Commission was required to make specific findings of fact with regards to statutory factors before assessing a penalty, (3) Operator was subject to a single fine, and (4) the Appellate Court was not required to defer to the Commission's final decision.

North Dakota

Moody v. Sundley, 2015 ND 204, 868 N.W.2d 491 (N.D. 2015).

Adjacent Landowners (Landowners) sued their Neighbor alleging he was trespassing on their property. The Neighbor counterclaimed for adverse possession of the disputed property. The parties in this case disputed the ownership of a portion land abutting the section-line, located west of a fence on land owned by the Landowners. The lower court found in favor of the Landowners and dismissed Neighbor's counterclaim on the grounds that his predecessors-in-interest failed to meet the burden of proving the elements of adverse possession. The Neighbor timely appealed claiming that the lower court erred by failing to conclude that he owned the disputed property through adverse possession. In affirming the judgment of lower court, the Supreme Court of North Dakota held that the Neighbor failed to establish adverse possession through witness testimony, or any other evidence, while also failing to raise the theory of acquiescence of the Landowners in his pleadings to the lower court. Therefore, the Supreme Court affirmed the decision of the lower court and denied any new issue on appeal.

Oregon

Bandon Pacific, Inc. v. Environmental Quality Com'n, 273 Or. App. 355, 2015 WL 5037113 (Or. Ct. App. 2015).

A seafood processing plant (Plant) was found in violation of four requirements stipulated under the National Pollution Discharge Elimination System (NPDES) permitting program. The Plant brought suit alleging that the Environmental Quality Commission (Commission) erred in one of the violations when they found that the Plant was liable for moderate violations instead of minor violations. The Appellate Court reviewed the agencies findings of evidence below and agreed with the Plant that they were only liable for minor violations. The Appellate Court found the Commission erred in its ruling because the Plant submitted substantial evidence throughout the years in question, and that the Plant's violation of inaccurate reporting as required under the NPDES did not have an adverse impact on the environment or human health. The Appellate Court noted that the Commission failed to provide any substantial evidence to rebut the Plant's evidence of a *de minimis* impact on the environment and, therefore, agreed with the Plant by finding that their violations were only of a minor magnitude.

Washington

Pendergrast v. Matichuk, 355 P.3d 1210 (Wash. Ct. App. 2015).

Original landowner (Grantor) deeded two parcels of their land separated by a fence that ran the length of the eastern boundary of the Eastern Grantee's property and the western length of the Western Grantee's property. Four years after the Eastern Grantee purchased the property from the Grantor, he torn down the fence and cut down a tree on the east side of the fence, which was Western Grantee's property, due to an erroneous survey which concluded that the fence and the tree was actually situated entirely on the Eastern Grantee's property. The Western Grantee filed suit to quiet title to the property and for trespass. A jury found the Eastern Grantee liable for surface trespass and for timber trespass, awarding the Western Grantee monetary damages. The Washington Court of Appeals upheld the jury's determinations, recognizing that both parties conduct manifested intent that the boundary line was the fence. The Court also noted that the fence provided sufficient notice to each party at the time of their purchase that it was the proper boundary separating the two parcels of land.

Chuck Carroll & John Yozzo, *If You Thought the Energy Sector Was Distressed*, 34-SEP Am. Bankr. Inst. J. 12 (2015).

Taylor A. Beaty, *Life on the Mississippi: Reducing the Harmful Effects of Agricultural Runoff in the Mississippi River Basin*, 41 Ohio N.U. L. Rev. 819 (2015).

William W. Wade, Ph.d., *Liquid Gold or Water for Pecans? Valuation of Groundwater in Regulatory Takings Law*, 45 Envtl. L. Rep. News & Analysis 10932 (2015).