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Recent Case Decisions

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TABLE OF CONTENTS

SELECTED OIL, GAS, AND ENERGY DECISIONS	456
SELECTED WIND AND WATER DECISIONS	458
SELECTED AGRICULTURE DECISIONS	460
ARTICLES OF INTEREST	463

This Case Report contains case decisions issued through January 3, 2016, and all case citations are current as of that date. The citations provided in this Case Report do not reflect changes made by Lexis or Westlaw. 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

Fourth Circuit

K & D Holdings, LLC v. Equitrans, L.P., 2015 WL 9461340, No. 15-1166 (4th Cir. 2015).

Lessor brought suit against both Lessee and Operator alleging that Operator had not followed through with the terms of the lease by failing to explore, produce, and store gas. Lessor argued that due to Operator's lack of action in all unit areas, Lessor was entitled to a "rebuttable presumption" under state law, which provides that an operator has abandoned the lease if the operator is inactive on the premises. Producer counter argued that the "rebuttable presumption" statute at issue did not apply because, under the terms of the lease, Operator had to perform only one of the alternative acts within the lease in order to maintain the entire lease. Operator contended that the lease should continue because Operator was protecting the underground gas on the premises by storing it. The district court rejected both arguments and acted, *sua sponte*, by finding that the lease in question was divisible into separate tracts, one tract continuing for exploration and production, with a separate tract remaining for gas storage. The lower court additionally held that after segmenting the lease into two separate tracts, the exploration and production tract had terminated after the primary term. The Operator appealed the lower court's decision. The Fourth Circuit agreed with the Operator, and found that under a fair construction of the lease terms, the lease was not divisible. Thus, because the Operator was using a portion of the land under the lease for protection of gas storage, the Operator maintained all of the rights under the lease.

Sixth Circuit

Kentucky Coal Ass'n, Inc. v. Tennessee Valley Authority, 804 F.3d 799 (6th Cir. 2015).

Coal Association brought this action against Valley Authority (Authority), pursuing a declaratory judgment that Authority arbitrarily switched a power plant from coal to natural-gas generation, thereby failing to comply with the Tennessee Valley Authority Act (TVAA) and the National Environmental Policy Act (NEPA). The Sixth Circuit affirmed the district court's judgment in favor of Authority, giving deference to Authority's discernable decision-making process. The administrative record established that Authority considered two alternatives to comply with the Clean

Air Act: (1) switching from coal to natural gas and (2) retrofitting old units with new pollution controls. Authority achieved the goal of the TVAA, which is to provide the least-cost energy system by considering relevant data over a twenty-year consumption period. The Court noted that although retrofitting would cost less in the short-term, the financial effect over the next two decades led Authority to switch to natural gas. Authority fulfilled NEPA standards by completing the preliminary environmental assessment, concluding that the switch would have no significant impact on the environment. The Court deferred to Authority's discretion not to complete an environmental impact statement.

Eighth Circuit

Northern Oil & Gas, Inc. v. Moen, 808 F.3d 373 (8th Cir. 2015).

Operator filed suit against Lessor seeking a declaratory judgment on whether an oil and gas lease executed between the parties was still in effect after the expiration of the primary term. At the end of the primary term, production existed in all parts of a section except the Southwest quarter. Lessor conceded that the lease was still in effect in the other three quarter-sections but argued that the lease expired as to the nonproducing Southwest quarter. Conversely, Operator argued that the Pugh Clause found within the terms of the lease caused the lease to remain valid as to the entire section. The district court focused its analysis on the definition of the word "section" found within the lease's Pugh Clause and granted summary judgment in favor of Operator. The Eighth Circuit affirmed the district court's decision, holding that the Pugh Clause severed the lease by the section boundaries. The Eighth Circuit concluded that the appropriate definition of the word "section" refers to the one-mile tract of land, such that production found on any part of that one-mile tract would extend the lease as to the entire section.

State

Louisiana

McCarthy v. Evolution Petroleum Corp.
2015 WL 5972515, No. 2014-C-2607 (La. 2015).

Mineral Sellers (Sellers) filed suit against the Oil Company (Company) that purchased their mineral rights, alleging fraud and seeking a rescission of the transaction. Sellers claimed that Company intentionally targeted vulnerable and elderly mineral rights owners who were not experienced in oil and gas practices. Company did not reveal to the mineral rights holders that it had an innovative carbon dioxide based technology that greatly enhanced the amount of oil that could be extracted, although it did release the technological advancement via press release. The new technology coupled with poor market conditions resulted in Company being able to purchase more mineral rights at lower prices. Sellers allege fraud by silence in failing to reveal the new technology to Sellers. The Supreme Court of Louisiana held for Company and refused to nullify the transaction, citing the speculative nature of drilling for both parties.

Indiana

Citizens Action Coalition of Indiana, Inc. v. Southern Indiana Gas and Elec. Co., 2015 WL 6550654, No. 93A02-1502-EX-110 (Ind. Ct. App. 2015).

Utility Company filed a petition with the state's Utility Regulatory Commission (Commission) for approval to modify their coal powered generating stations to meet new EPA standards, requesting incentives and reimbursement from ratepayers for costs associated with the proposed modification. Action Coalition and others intervened, opposing the petition and arguing that retiring Utility Company's coal powered generators and replacing them with new natural gas-powered generators would be more cost-effective. The Commission approved the proposal and granted the request for reimbursement. On appeal, Action Coalition argued that the Commission failed to make necessary findings of fact material to its determination of the issues and statutory factors. Utility Company responded, claiming that the appeal was moot and that the Commission made all necessary findings. The Indiana Court of Appeals held that the Commission did err in failing to make findings on the factors listed in the Indiana Code and remanded the case with instructions.

Texas

Lightning Oil Co. v. Anadarko E & P Onshore LLC, 2015 WL 5964939, No. 04-14-00903-CV (Tex. App. 2015).

Oil company (Lessee) leased mineral acreage from a landowner (Lessor). Lessee brought suit claiming trespass against another Drilling Company and sought to enjoin Drilling Company from drilling through the Lessee's leasehold estate to reach a neighboring lease. While Drilling Company had permission to drill from the Lessor, it did not have permission from Lessee to cross its leasehold estate. The Court of Appeals of Texas affirmed the lower court's decision granting of summary judgment in favor of Drilling Company. The Court of Appeals determined control of the subsurface belonged to the surface owner, as Lessee did not own or exclusively control the subsurface. Although Lessee developed, operated, and produced oil in the subsurface, Lessee was not conveyed the ability to control the subsurface to the extent of ejecting other drilling companies from the mineral estate.

Wyoming

Pennaco Energy, Inc. v. KD Co. LLC, 363 P.3d 18 (Wyo. 2015).

Energy Company (Company) obtained oil and gas leases in Wyoming and subsequently entered into contracts with the owners of the surface estate (Landowners), which granted Company access to and use of Landowners' property to explore and extract minerals. In the surface agreements, Company committed to pay for surface damages and use of the land, and to restore the land as close to its prior condition as possible once drilling operations concluded. Landowners sued for breach of the surface agreements. The lower court granted summary judgment in favor of Landowners, concluding that Company remained liable under the surface agreements even after assignment of the mineral estate. The Supreme Court of Wyoming affirmed the lower court's decision and held that the agreements between Company and Landowners did not release Company from its obligations upon assignment, the exculpatory clause in the lease was not incorporated by reference into the surface agreements, and Landowners were entitled to an award of attorney fees pursuant to other agreements.

State

Arizona

Arizona Dept. of Water Resources v. McClennen, 238 Ariz. 371 (Ariz. 2015).

Corporation applied to the Arizona Department of Water Resources (ADWR), seeking to transfer its rights to use surface water pursuant to a state statute. County, believing that it was an “interested person” under the state statute, sought to prevent this transfer. Despite County’s objections, ADWR granted Corporation’s transfer application. County appealed the decision to the Superior Court. The Superior Court vacated ADWR’s decision. Corporation then appealed to the Supreme Court of Arizona. The Supreme Court of Arizona vacated the Superior Court’s decision and held that County was not an interested person because under the state statute, an interested person is one who alleges that they have an interest that is protected by the statute that would be affected by the application for severance and transfer. Based on the evidence before the Court, County failed to meet the burden of proof that it was an interested person.

California

Great Oaks Water Company v. Santa Clara Valley Water District, 242 Cal.App.4th 1187 (Cal. Ct. App. 2015).

Water District levied extraction fees on Water Company for water drawn from wells on its property. Water Company brought suit, claiming that the extraction fees violated the Santa Clara Valley Water District Act (SCVWDA). The lower court found in favor of Water Company and awarded it a complete refund of the extraction fees and, in the alternative, a partial refund on grounds that the fees charged violated the SCVWDA. The Appellate Court reversed the lower court’s decision and held: (1) the fee is a property-related charge for purposes of Article 13D, and thus, it is subject to some of the constraints of that enactment; (2) the fee is also a charge for water service, which is exempt from the voter ratification requirement; (3) the pre-suit claim submitted by Water Company did not preserve any monetary damages against Water District for the violations of Article 13D; and (4) because the matter was treated as a simple action for damages when it should have been treated as a petition for a writ of mandate, the lower court failed to apply a deferential standard of review in deciding whether Water District’s

setting of the fee—or its use of the resulting proceeds—complied with SCVWDA.

Colorado

In Matter of Water Rights, 361 P.3d 392 (Colo. 2015).

Applicant filed an application to appropriate storm runoff water. The application was denied by the Ground Water Commission (Commission) due to the fact that the water did not flow adjacent to a continuous natural stream. The Commission determined that the runoff was ground water and therefore under its exclusive jurisdiction. Applicant proceeded to file for a hearing on his application. The lower court denied his application, finding that a portion of the storm runoff was designated ground water, which falls under the jurisdiction of the Commission. The Appellate Court affirmed the lower court’s decision because the water Applicant sought to appropriate met the statutory definition of designated ground water and was therefore subject to the administration of the Commission. On appeal, the Supreme Court of Colorado affirmed the Appellate Court’s ruling.

Maine

Champlain Wind, LLC v. Board of Environmental Protection, 2015 WL 7770652, No. 14-291 (Me. 2015).

Wind Developer submitted a proposal for a windfarm within what is defined by state law as an “expedited area.” According to the statutory language, the process is streamlined for permitting approval from the Board of Environmental Protection (Board) within this area. The proposed windfarm was located near the boarder of the expedited area and close to nine large ponds determined to be “scenic resources of state or national significance.” Under the same legislation used for permitting, the Board is given the power to deny proposals for projects that would disrupt or harm scenic resources of the state. The Board proceeded to deny Wind Developer’s application and proposal. Wind Developer appealed to the Supreme Court of Maine, arguing that the Board does not have the right to aggregate the environmental effect on all nine large ponds, and because it found no significant effect on any individual pond, the project should have been approved as drafted. The Supreme Court of Maine

affirmed the Board's decision, citing that the law does not specifically prohibit such aggregation and that the Court may only overturn agency decisions it finds to be unreasonable, unjust, or unlawful.

Montana

Teton Co-Op Canal Co. v. Teton Coop Reservoir Co., 2015 WL 8923528, No. DA 15-0136 (Mont. 2015).

Reservoir Company appealed an order of a state water court, which adjudicated Canal Company's water rights to the Eureka Reservoir. The issue the court addressed on appeal was whether the water court erred in determining that off-stream water storage in the Eureka Reservoir was included as part of Canal Company's notice of appropriation. The Appellate Court reversed and remanded the case for further proceedings, holding that the water court had misapprehended the effect of the evidence that a sizable reservoir at the Eureka site was part of a 1890 Notice. As the evidence established, the 1890 Notice did not contemplate the Eureka Reservoir, and Canal Company failed to prosecute the Eureka Reservoir's development with reasonable diligence until the mid-1930s. The Appellate Court held that since Canal Company's claim cannot be staked to the 1890 Notice or the nullified 1891 Notice, the water court must determine Canal Company's priority date for the Eureka Reservoir on remand.

Oregon

Hardy v. State Land Bd., 360 P.3d 647 (Or. Ct. App. 2015).

State Agencies contended that an 89-mile segment study of the Rogue River was declared navigable for title purposes in 1975. Due to this declaration of navigability, State Agencies further contended that the State owned all right, title, and interest in and to the lands located below the ordinary high water line along the 89-mile river study segment, and it may only be used by the public for certain uses. Landowner filed a petition for judicial review under the relevant state statute challenging State Agencies' declaration of ownership. In assessing State Agencies' claim regarding navigability, the lower court looked to the usage of the river. On appeal, State Agencies argued that the lower court erred in applying the actual use theory rather than the susceptible use theory. The Oregon Court of Appeals analyzed whether the upper-portion of the river was susceptible to navigation in 1859. After considering several factors, such as log

drives and recreational use, the Appellate Court found that the 89-mile river study segment was not navigable water and could not be deemed so for title examination purposes.

Federal

Sixth Circuit

Merrick v. Diageo Americas Supply, Inc., 2015 WL 6646818, No. 14-6198 (6th Cir. 2015).

Property Owners brought a putative class action suit against a whiskey distillery operator (Distiller), alleging negligence, nuisance, and trespass, based on Distiller's ethanol emissions allegedly combining with condensation on Property Owners' property creating fungus. The lower court denied Distiller's motion to dismiss, and Distiller's filed an interlocutory appeal. The Sixth Circuit held that the Clean Air Act (CAA) does not preempt state common law remedies seeking to control air pollution even where the defendant is in compliance with CAA requirements. Further, even though Distiller's federally enforceable district origin operating permit did not set a cap for fugitive ethanol emissions, environmental regulation was a field that states had traditionally occupied, and allowing states to apply their common law to emissions advanced CAA's stated purpose by empowering states to address and curtail air pollution at its source.

Ninth Circuit

Desert Protective Council v. U.S. Dept. of the Interior, 2015 WL 7292969, No. 13-55561 (9th Cir. 2015).

Council filed suit against the United States Department of the Interior and the Bureau of Land Management (collectively, the Government) under the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Administrative Procedure Act (APA). According to Council, the Government had not given Council the ability to read the final bat migration studies used in the environmental impact study of a proposed wind energy project. The Government had published the study for the statutorily required 30 days, and while Council commented on other sections of the environmental impact study, it did not comment on the bat migration report. The lower court granted summary judgment for the Government. The Ninth Circuit affirmed the lower court's decision in favor of the Government. In its decision, the Appellate Court noted that NEPA does not require environmental disturbance mitigation plans to be in their final form when published to comply with NEPA procedural requirements. The court noted that the Government

had not acted arbitrarily or capriciously in its publication of the study, nor had it acted so when only working to minimize environmental damage, not to prevent it as the statutes require.

State

Florida

Rogers v. United States, 2015 WL 6749915, No. SC14-1465 (Fla. 2015).

Owners of land abutting railroad parcels (Landowners) filed suit against the United States in federal court, alleging that the Government effected a taking of their property by converting abandoned railroad right-of-ways to a recreational trail, pursuant to an Act of Congress. Landowners appealed from a judgment in favor of the Government. The United States Court of Appeals for the Federal Circuit submitted a certified question to the Supreme Court of Florida as to whether the railroad company's interest in the property is something less than fee simple absolute by virtue of (1) Florida statutes, (2) state policy, and/or (3) the factual considerations of this particular case. The Supreme Court of Florida answered all three components of the certified question in the negative, validating the Government's contention that the railroad company could have, by unambiguous deed, acquired ownership of the lands in fee simple. The case was then remanded to the Court of Appeals.

Georgia

White v. Ringgold Telephone Co., 779 S.E.2d 378 (Ga. Ct. App. 2015).

Telephone Company petitioned to condemn property for purposes of providing telephone and telecommunication services while Landowner's lawsuit regarding Telephone Company's alleged breach of easement agreement was pending. The lower court denied Landowners' motion to dismiss and entered a condemnation order. Landowners appealed the condemnation order to the Georgia Court of Appeals, which held that Telephone Company attempted but was unable to procure the property by contract, and condemnation of the property was necessary. Therefore, because the trial court sits as the finder of fact in ruling on exceptions to a special master's ruling, its judgment will not be disturbed if there is any evidence in the record to sustain it.

Louisiana

Roberson v. E. W. Chance, 2015 WL 7280562, No. 50,169–CA (La. App. 2 Cir. 2015).

Landowners brought action against purported Lot Owners, alleging that Lot Owners were trespassing without the right to possession. The lower court, after a bench trial, entered judgment finding that Lot Owners obtained the lot by a ten-year acquisitive prescription or adverse possession. Landowners then appealed. The Court of Appeals held: (1) the first lot owner was properly dismissed from the suit; (2) the prior owners of the disputed lot, before conveying it to Lot Owners, possessed the lot in good faith for at least ten years, as required for ten-year acquisitive prescription; and (3) the prior owners had just title, as required for ten-year acquisitive prescription.

Massachusetts

DeFelice Corp. v. Department of Public Utilities, 38 N.E. 3d 1040 (Mass. App. Ct. 2015).

Contractor struck an underground natural gas line while digging a water main, resulting in an explosion with damage to nearby property. The Department of Public Utilities (DPU) investigated Contractor's operations, concluding that Contractor failed to take the necessary precautionary methods prior to the dig, and fined Contractor \$31,000 for violating "dig safe" laws. Contractor appealed the administrative agency's fine and decision. The Appeals Court of Massachusetts determined that it would only overrule the discretion of the agency in extraordinary or exceptional cases, and affirmed DPU's administrative fine.

Montana

Public Land/Water Access Ass'n, Inc. v. Jones, 358 P.3d 899 (Mont. 2015).

Landowner prevented access to roads running across his property, which served as easements to reach adjacent public property. Citizens Group sued for declaratory relief and damages. During the proceedings, a wildfire destroyed the bridge serving as a portion of the easement. Landowner fashioned a new bridge using his own railcar, and argued that by constructing a new bridge, he was therefore permitted to prevent public access to it. On appeal, the Supreme Court of Montana held that Landowner was liable for tortious interference of public property and awarded

Citizens Group damages to pay for a new bridge as well as additional punitive damages for Landowner's malicious actions.

New Jersey

Van Horn v. Harmony Sand & Gravel, Inc., 442 N.J. Super. 333 (N.J. Super. Ct. App. Div. 2015).

In 2014, Landowner, who had inherited land interests a decade earlier, filed a complaint to eject Operator from the property who had been conducting soil excavation on the property. Operator had been conducting excavation by a 1990 agreement (First Agreement) originally signed by Landowner's father. When the First Agreement expired in 2000, the parties executed another agreement (Second Agreement). The Second Agreement gave Operator the option to extend operations for an indefinite amount of time, expiring only when Operator determined there was insufficient aggregate material to remove. The parties stipulated that no material facts were in dispute and moved for summary judgment. The lower court ruled in Operator's favor due to the fact that, although the Second Agreement governed no definite period of time, the agreement expressly terminated once certain conditions were met. On appeal, the Superior Court of New Jersey held that the Second Agreement was not a lease, despite what the parties called it, because it did not give Operator exclusive possession as a leasehold estate. Instead, the Second Agreement was a valid profit relationship, permitting "severance of the physical substances of a servient tenement" without the option for Landowner to revoke absent default.

South Dakota

Pesall v. Montana Dakota Utilities, Co., 871 N.W.2d 649 (S.D. 2015).

Public Utilities Commission (PUC) issued a permit to Power Companies (Companies) that allowed Companies to construct a high-voltage electric transmission line designed to identify and mitigate potential parasite problems. Individual objected and appealed, but the Appellate Court affirmed PUC's decision to grant the permit. Individual raised two questions on appeal to the Supreme Court: (1) whether PUC improperly delegated its authority to a private party; and (2) whether PUC exceeded a statutory time limit for issuing complete findings. The Supreme Court of South Dakota affirmed the Appellate Court's decision and held: (1) PUC did not delegate its regulatory authority to Companies since the modified condition and mitigation plan allowed for PUC to verify and exercise its oversight authority over the

development and construction of the transmission line;
(2) PUC timely rendered complete findings on the permit application since PUC retained future enforcement of conditions even without listing specific mitigation plans in the its final decision.

Texas

In re Electric Transmission Texas, LLC, 2015 WL 6759238, No. 13-15-00423-CV (Tex. App. 2015).

Electricity Transmission Company sought a writ of mandamus, contending that the lower court acted outside of its jurisdiction in not complying with the eminent domain statute when it failed to appoint special commissioners and granted a continuance to hear Landowner's Plea in Abatement. The Court of Appeals noted that the period between the filing of the statement seeking condemnation and the award by the special commissioners is "administrative in nature." During this administrative phase, trial court jurisdiction "is limited to appointing the commissioners, receiving their opinion as to value, and rendering judgment based upon the commissioners' award." In other words, the trial court can only act within the prescribed scope of the eminent domain statute. Because the trial court acted outside of its statutory authority by refusing to appoint special commissioners and granting a continuance, such orders are void. The Court of Appeals issued a writ of mandamus, conditioned on the lower court's failure to vacate its orders and appoint three special commissioners as required by the eminent domain statute.

ARTICLES OF INTEREST

Jason A. Robison, *Wyoming's Big Horn General Stream Adjudication*, 15 Wyo. L. Rev. 243 (2015).

Lawrence J. MacDonnell, *Rethinking the Use of General Stream Adjudications*, 15 Wyo. L. Rev. 347 (2015).

Alexandria Hanauer, *Is Indiana Conserving its Groundwater?: The Future of Indiana Groundwater After Town of Avon v. West Central Conservancy District*, 49 Ind. L. Rev. 181 (2015).

John T. Bradford, *Selected Topics Regarding the Taxation of Oil and Gas Farmout Transactions*, 15 Hous. Bus. & Tax L. J. 147 (2015).

Hayley Carpenter, *Deepwater Horizon: Agency Reorganization and Appropriations in Offshore Oil Regulation*, 42 Ecology L.Q. 181 (2015).

Rafael Leal-Arcas, *How Governing International Trade in Energy Can Enhance EU Energy Security*, 6 Renewable Energy L. & Pol'y Rev. 202 (2015).

Elena Pacheco, *It's a Fracking Conundrum: Environmental Justice and the Battle to Regulate Hydraulic Fracturing*, 42 Ecology L.Q. 373 (2015).

Fazil Jamal, *Legal Aspects of Transnational Energy Pipelines: A Critical Appraisal*, 3 Eur. Networks L. & Reg. Q. 103 (2015).