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Recent Case Decisions

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RECENT CASE DECISIONS

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SELECTED OIL AND GAS DECISIONS

Upstream – Federal

5th Circuit

Larry Doiron, Inc. v. Specialty Rental Tools & Supply, L.L.P., 849 F.3d 602 (5th Cir. 2017).

Contractor and service company ("Company") executed an oral contract ("Contract") for flow-back services to improve the performance of an offshore natural-gas well. Performance on the Contract eventually required use of a crane barge. During the flow-back operation, a worker from Company suffered injuries after falling from the crane onto the deck of the barge. Contractor demanded that Company defend and indemnify Contractor against any claims initiated by the worker. The issue became whether maritime law or state law governed the indemnity clause of the parties' agreement. Under state law, the indemnity clause was void as against public policy; but under maritime law, the clause was enforceable. The district court granted summary judgment for Contractor and denied Company's prayer for application of state law. Company appealed, and the court of appeals affirmed. First, the court noted that the agreement called for application of general maritime law. Then, the court applied a factor test to determine whether the work performed was "maritime in nature." Using this test, the court concluded that the flow-back operation was "inextricably intertwined with maritime activities," and thus the district court did not err in applying maritime law.

10th Circuit

Max Oil Co. v. Range Prod. Co., No. 16–6238, 2017 WL 972083 (10th Cir. Mar. 14, 2017).

Landowner operated various wells on its property and executed a lease commitment agreement with Operator. Landowner agreed to install a plug on its wells to isolate production zones from the underlying formation. Later, a state agency pooled the rights of mineral owners in that formation, placed Operator in charge of the pooled unit, and granted Operator a permit to drill additional wells. When Operator completed those wells by hydraulic fracturing, Landowner noticed its wells producing excess water, which restricted production. Landowner unsuccessfully attempted to settle its

damages with Operator. After verifying the integrity of its wells, Landowner sued Operator for negligence, conversion, and other claims. Operator filed a motion to dismiss, arguing that the claims were time-barred under the relevant limitations period. The district court agreed and dismissed the suit with prejudice, concluding any amendment would be futile. On appeal, Landowner argued that the limitations period did not begin to run until it knew that Operator had caused its damages. But the court of appeals concluded that Landowner's own allegations failed to support that argument. In addition, the court stated that Landowner should not have feared sanctions because Landowner had reason to believe that Operator's drilling encroached on the wells. Moreover, Landowner's attempts to settle the dispute did not toll or waive the applicable limitations period. And finally, the court concluded that the district court did not abuse its discretion in refusing leave to amend because Landowner failed to present a proper motion.

Upstream – State

Kentucky

Potter v. Blue Flame Energy Corp., NO. 2015–CA–000873–MR, 2017 WL 836942 (Ky. Ct. App. Mar. 3, 2017).

Operator drilled various wells on certain real property to which Landowners owned the surface estate. After nearly a decade, Landowners filed a complaint against Operator, alleging that Operator was mistaken in believing it owned the mineral rights beneath the land. The controversy revolved around a century-old deed ("Deed") from a grantor coal company ("Grantor") to Landowners' predecessors in interest. The trial court granted summary judgment for Operator, concluding the Deed conveyed only the surface estate to Landowners because Grantor reserved the entire mineral estate. Landowners appealed, arguing that the trial court erred in its interpretation. The court of appeals reversed and remanded. The court determined that Grantor had reserved only the coal estate in the Deed. Absent express severance of the minerals from the surface, the court reasoned, the mineral estate remained with the surface owner. In the court's view, Grantor intended to convey the entirety of its interest other than the coal to Landowners' predecessors and the trial court erroneously construed the Deed.

Louisiana

Smith v. Andrews, No. 51,186-CA, 2017 WL 603992 (La. App. 2 Cir. 2/15/17).

Mineral servitude owners ("Mineral Owners") brought an action against Landowners claiming they were improperly attempting to divest Mineral Owners of their interest. Mineral Owners granted an oil and gas lease on the subject tracts, located in the Haynesville shale formation, which eventually became producing tracts. Landowners claimed that the last well ceased production in 1997, and had the Louisiana regulatory agency issue an order of non-production stating that Mineral Owners were aware of non-production. The boom of the Haynesville shale prompted both parties to assert their interest in the mineral estate. The trial court found that Mineral Owners met their burden of proving that mineral servitudes did not prescribe through nonuse. From 1997 to the time of suit, Mineral Owners, through their lessees, made good-faith efforts to produce minerals, and production in paying quantities is not necessary to interrupt the prescription period under Louisiana law. Therefore, as long as reworking operations reasonably relate to restoring production, the operations disrupt the prescription period. Unitization of Mineral Owners, with an offset production well drilled on their sections, constituted a disruption of the prescription period. The appellate court affirmed the trial court's findings of fact that mineral rights remained valid.

Petro-Chem Operating Co. v. Flat River Farms, LLC, No. 51,212-CA, 2017 WL 786868 (La. App. 2 Cir. 3/1/17).

Operator brought a concursus suit to determine rightful mineral ownership between purported Mineral servitude owner ("Mineral Owner") and Surface Owner. Upon notification of potential title issues, Operator wanted to resolve the issue between the two possible owners. Surface Owner argued that the mineral servitude was created in a 1994 surface conveyance that carved out a mineral reservation to Mineral Owner and that it prescribed to Surface Owner the mineral servitude following a ten-year period of nonuse. Mineral Owner argued that its interest survived the ten-year period because inclement weather and a federal easement obstructed use operations. The trial court found that poor planning, not externalities, caused the untimely spud date, resulting in the mineral servitude being prescribed to Surface Owner. Surface Owner also challenged the correction affidavits filed by the notary, changing the ownership rights of the parties from the original

filings. The trial court found that the correction affidavits did not properly transfer land ownership interests. The appellate court upheld the trial court's findings and ordered court costs paid from royalty money deposited with the court.

Michigan

In re Antrim Shale Formation re Operation of Wells Under Vacuum, No. 327723, 2017 WL 1100717 (Mich. Ct. App. Mar. 21, 2017).

Oil companies ("Companies") appealed the decision of the state public service commission ("Commission") granting natural gas producers ("Producers") the right and permit to produce natural gas under vacuum. Producers argued the process would aid in production from the formation and reduce waste. Companies argued that such process would drain the field and infringe the correlative rights of other interests. Commission found that although Michigan is an "ownership-in-place" jurisdiction, this did not apply because the formation production does not draw from a common pool; this only limits interests to their respective share of the formation. Commission additionally found that the drainage would likely not occur due to the complex nature of the fractions in the formation and the proper spacing distance under Michigan regulations. The appellate court held that Commission's findings were reasonable and that Commission had the proper authority to approve operation of wells under vacuum in the Atrium formation.

North Dakota

Burk v. State ex rel. Bd. of Univ. & Sch. Lands, 2017 ND 25, 890 N.W.2d 535.

Landowner appealed a judgment in favor of the State based on a claim that the State wrongfully withheld gross production and extraction taxes from his royalty interests. Landowner purchased land by quit claim deed from a Bank that acted as an agent for the state treasurer in 1991. The deed reserved fifty percent of the mineral interest to the Bank. Thirteen years later, a state school board ("Board") entered an oil and gas lease with an Energy Corporation ("Corp. A") for 100-percent of the mineral interest. Three years later, Landowner entered its own oil and gas lease with a different Energy Corporation ("Corp. B"), which prompted a drilling company ("Driller") to complete a well on this property. Driller relied on a

2008 title opinion that designated State as 100-percent owner of the mineral interest thereby voiding Landowner's lease with Corp. B. This resulted in settlement negotiations and a settlement agreement ("Agreement") in 2011 that ended with the State conveying, by quit claim deed, the property Landowner initially purchased in 1991, reserving fifty percent of the mineral interest. This Agreement also ratified Board's lease to Corp. A. Then in 2012, Landowner sued Driller in federal court to recover taxes withheld from his royalties of the gross production, resulting in this appeal. But the North Dakota Supreme Court concluded that the plain language of the Agreement, though silent, did not provide Landowner a tax-free royalty interest. Although the court held the purpose of the 2011 Agreement was to place Landowner in the same position as the Bank, it declined to interpret the language to give Landowner full authority of the State including implying a waiver of taxes from the deed's language.

Envtl. Driven Sols., LLC v. Dunn Cty., 2003 ND 140, 890 N.W.2d 841.

Waste disposal company sought a declaratory judgment that the state industrial commission ("State") possessed exclusive regulatory jurisdiction over oil treatment plants, rather than the local county ("County"). The trial court granted summary judgment, concluding that State had exclusive authority to regulate oil treatment plants. County appealed, stating that State's approval violated County property ordinances and that State did not have the authority to regulate treatment plants under statutory language. The North Dakota Supreme Court affirmed the trial court order holding that the statute unambiguously placed treatment facilities under the exclusive jurisdiction of State and that State's rulings preempted and superseded County's ordinances.

Pennsylvania

Montgomery v. Oil & Gas Enters., Inc., No. 1164 WDA 2015, 2017 WL 1048113 (Pa. Super. Ct. Mar. 17, 2017).

Landowner sought a declaratory judgment against Lessee to terminate an oil and gas lease. Lessee received its interest in the formation through partial assignment from another lessee. Landowner received its land interest through deed from Lessors after the assignment of the oil and gas lease. The trial court granted in favor of Landowner and Lessee appealed claiming that the court improperly terminated the lease. The court of appeals first noted that the lease and assignment language created severable interests, so

Landowner need not have joined all necessary parties, as the suit only related to Lessee and Landowner contested interests. The court further found that the lease terminated for lack of production, and Lessee's argument regarding potential for production did not overcome the evidence of lease termination. The appellate court held that the trial court's conclusion was reasonable and affirmed the termination of Lessee's interest to Landowner's severed minerals.

Cornwall Mountain Inv., L.P. v. Thomas E. Proctor Heirs Tr., No. 1706 MDA 2015, 2017 WL 1057496 (Pa. Mar. 21, 2017).

Trustees appealed a judgment for a Developer in a quiet title action as to oil and gas rights beneath nearly three thousand acres of unseated property acquired from a 1932 tax sale. Although the Pennsylvania Superior Court reasoned that this dispute centered on only the sale of the mineral estate at the tax sale, and therefore a recent Pennsylvania Supreme Court decision would be controlling. Trustees, aiming to invalidate the tax sale, based their argument on claims that: (1) "minerals" as used in the 1930 and 1931 assessments from tax sale did not include the oil and gas interests and (2) that state law creates a presumption that "minerals" in a conveying instrument does not include "oil or gas." But after review of other precedent invoked by Trustees to support their claim of an applicable state law presumption, the court held tax assessment and sales described as "Mineral Rights Only" includes oil and gas interests, even if such interests had no taxable value at the time of sale because the minerals were undiscovered at the time. The court further held that the principle of oil and gas interests as not taxable while in the ground does not retroactively apply because of the prevailing policy concerns that retroactive invalidation would undermine the power of the taxing authority's ability.

Wyoming

Anadarko Land Corp. v. Family Tree Corp., 2017 WY 24, 389 P.3d 1218.

Corporation-1 brought a quiet title action on a parcel of land that Corporation-2 believed it held an interest in. The mineral and surface interests had been severed previously with Railroad Company owning the mineral rights. In 1912, there was an assessment of tax placed on the mineral rights that was never paid, which resulted in a tax deed of those interests. Even though there had been a tax deed of the minerals, Railroad Company later sold its mineral interest, which ended in the hands of

Corporation-2. Corporation-1 acquired what it believed to be ownership of both surface and mineral rights in the land. Corporation-2 claims its rights in the minerals, stating that the tax deed is void because the taxing authority in 1912 had no power to levy the tax. This would void the interest that was sold in 1912 and leave Corporation-2 with the rights to the minerals. The court held that the tax deed was voidable, not void, and thus a claim that it was void had to have been brought by 1918, within the six-year statute of limitations. Because a century had since passed from the voidable deed, the tax deed stands as a valid conveyance of property, leaving Corporation-1 with full title to the land.

Midstream – Federal

D.C. Circuit

Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 2017 WL 908538 (D.D.C. March 7, 2017).

The U.S. Army Corps of Engineers ("Corps") began taking grants for the construction of a crude oil pipeline to run near tribal land. The Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe ("Sioux Tribes") sought an injunction for the project. Sioux Tribes first sought an injunction via a violation of the National Environmental Policy Act. However, the court did not find any violation worth preventing the construction of the pipeline. Sioux Tribes then sought an injunction based off a violation of the Religious Freedom Restoration Act ("RFRA"), claiming that the crude oil pipeline would prevent the members of the tribes on the reservation to practice their religious ceremonies without interference. Under the doctrine of laches, Corps tried to bar the RFRA claims. The court heard the RFRA claims under scrutiny and ultimately held that the pipeline would not affect the practice of Sioux Tribes religious ceremonies enough to justify preventing the construction of the pipeline.

S.D. Ohio

Columbia Gas Transmission, LLC v. 171.54 Acres of Land, More or Less, in Fairfield, Hocking, Monroe, Morgan, Muskingum, Noble, Perry, and Vinton Counties, Ohio, 2017 WL 838214 (S.D. Ohio March 3, 2017).

An interstate natural gas company ("Gas Company") brought action for an order to authorize the condemnation and immediate access and use of all

necessary property interests to construct a natural gas pipeline. The Federal Energy Regulatory Commission has the authority to issue a certificate of public convenience and necessity that allows Gas Company to acquire land through eminent domain if: (1) the company is unable to agree with property owners on compensation or through contract and (2) the use of the land is "necessary to comply with the certificate." The court determined that Gas Company met the requirements for the right to condemn the necessary properties and then looked to the request for immediate possession and use of that land. When weighing the factors of Gas Company's probability of success on the merits of the injunction, the irreparable harm to Gas Company absent injunctive relief, and the public interest in speedy completion of the project, they outweighed the potential harm to the landowners or to the public. Thus, Gas Company gained authorization for the use of eminent domain to acquire land necessary to build a natural gas pipeline and the immediate access to that land because of the large public interest in its completion.

Midstream – State

Kentucky

Fleming v. EQT Gathering, LLC, 509 S.W.3d 18 (Ky. 2017).

Landowners allege trespass damages for a 150-foot section of pipeline under their land and damages from a bulldozer for a small section of land during installation of said pipeline. Pipeline Owner claimed it had authority to claim the land through eminent domain and it would be liable at most to a reverse condemnation action, not common law trespass. There was a dispute over the boundary line of the land in question, with Pipeline Owner claiming that the pipeline never crossed onto Landowners' property. The trial court instructed the jury that the pipeline was on Landowners' land though there was evidence to the contrary, including an expert surveyor that testified to the pipeline's complete standing across a county line that borders the land in question. The trial court decided in favor of the Landowners, assuming that the pipeline did cross the property line and that it was subject to common law trespass actions. The Kentucky Supreme Court reversed the trial court's decision in part, holding that the question of whether the pipeline crosses onto the landowner's land is not a question of law but a question of fact for the jury to resolve.

SELECTED WATER DECISIONS

Federal

9th Circuit

Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., 849 F.3d 1262 (9th Cir. 2017).

On interlocutory appeal from a district court's grant of partial summary judgment in favor of a Native American tribe ("Tribe") and the United States, Water Agencies asked the Ninth Circuit to address whether the reserved water rights doctrine from *Winters v. United States*, 207 U.S. 564 (1908), applies to groundwater beneath Native American reservations. The court answered in the affirmative because: (1) the federal government impliedly reserved general water rights when establishing reservations in desert regions; (2) Tribe's implied general reserved water right extended to groundwater as it was a condition necessary for Tribe's survival; and (3) any of Tribe's state water entitlements did not limit its federally implied water rights. Thus, when interpreting "short in length" Executive Orders that encapsulate a broader governmental objective, such as relocating Native American tribes and fostering agrarian societies, courts should infer that the government knew of the necessity of water to life for Native American tribes in arid environments.

San Luis & Delta-Mendota Water Auth. v. Haugrud, 848 F.3d 1216 (9th Cir. 2017).

Water Authority sued the Bureau of Reclamation ("Bureau") for its failure to prepare environmental impact statements or engage in consultation prior to its release of water, stating it violated numerous federal statutes. Bureau claimed that the statutes cited in Water Authority's challenge granted it the authority to release water, even without environmental impact statements or consultation prior to the action. The trial court granted summary judgment for Bureau, claiming that it had statutory authority to release the water. The trial court additionally found that Water Authority lacked standing to challenge the release of the water as it does not pose a "reasonably probable" threat to its interests. The trial court stated in passing that the federal statute the Bureau relied upon did not authorize release of water to benefit a fish population. On appeal, the Ninth Circuit affirmed the trial court ruling except the issue of Bureau's ability to release water for the

benefit of the fish population. The court found that Bureau had the explicit statutory authority to release water to benefit the fish population.

D.C. Circuit

Missouri ex rel. Koster v. Zinke, 849 F.3d 1111 (D.C. Cir. 2017).

The Province of Manitoba and the State of Missouri ("Challengers") challenged a project to carry water from the Missouri River to the Hudson Bay River Basin, to help supply drinking water for residents, which was created by Bureau of Reclamation ("Bureau") and the State of North Dakota ("State"). Challengers alleged that the project failed to meet statutory requirements to detail the environmental impact of the proposed project. The trial court issued a permanent injunction for the construction of the project until Bureau complied with all environmental study requirements. State sought modification of the injunction by citing two significant changed circumstances: State proposed a plan to reduce its influence over the project and detailed the risk of increased arsenic levels in the current water supply. The D.C. Circuit granted the State's modification of the injunction to address an "imminent public health crisis."

State

Texas

Ware v. Texas Comm'n on Envtl. Quality, No. 03-14-00416, 2017 WL 875307 (Tex. App. March 3, 2017).

In Texas, water appropriation permits are acquired from the Texas Commission on Environmental Quality ("TCEQ"). In 1996, Landowner along the Lampasas River obtained a ten-year term permit to allow him to divert up to 130 acre-feet of water from the Lampasas River every year. Additionally, the permit included a statement that "[t]he priority date of this permit and all extensions hereof shall be July 1, 1997." Eight years later, Landowner filed for a renewal of his permit, but TCEQ determined there was not enough water in the river to support his usage and denied the renewal. Landowner requested a contested-case hearing on the issue and argued that his permit should not be denied as Brazos River Authority ("BRA") had a later in time permit and requested much more water than he, and therefore its permit should be denied, not his. The Administrative Law Judge decided that based on the facts of where the two entities get their

water and BRA's ability to store water, while Landowner had none, Landowner's permit was properly denied. Landowner appealed to the state district court and appellate court, both of which upheld the denial of the permit as proper under State's regulatory scheme for water.

SELECTED LAND DECISIONS

Agricultural Use

Iowa

Porter v. Harden, 891 N.W.2d 420 (Iowa 2017), *reh'g denied*, 891 N.W.2d 420 (Mar. 29, 2017).

Landowners of a six-acre parcel filed forcible entry and detainer ("FED") action against Tenants who lived in a home on Landowner's parcel for twenty-four years. This dispute arose shortly after Tenants filed lawsuit against Landowners, claiming they had an oral agreement to purchase the property. Tenants replied to the FED action, claiming that they had a farm tenancy and that Landowners, in filing their FED action, did not comply with the legal requirements for terminating a farm tenancy under a state statute. Tenants' farm tenancy required the court to determine whether Tenants' decision to graze a single, thirty-eight-year-old horse at their residence sufficiently established a farm tenancy, to trigger the special termination protections. The court referred to another statute that defined "farm tenancy" as "a leasehold interest in land held by a person who . . . provides for the care and feeding of livestock on the land." Since the statute did not expressly articulate a "primary purpose test" for the phrase "the land," the court applied the doctrine of *noscitur a socilis* to conclude that the keeping of a single horse does not establish a farm tenancy triggering the special termination requirements under the statute.

Easements

Missouri

Phelan v. Rosener, 511 S.W.3d 431 (Mo. Ct. App. 2017).

Landowner owned land that was once subject to an easement. The easement granted Caretaker the right to cross a road to tend to other properties adjacent to Landowner's property. However, Landowner believed the easement to be void and thus brought a quiet title action and requested trespass damages. The trial court reviewed the easement to determine if it was an easement appurtenant or easement in gross. The court found that it was an easement appurtenant, even though it was missing "to Owner and his heirs" language, as the intent of the easement was for Caretaker to tend

to his lands and should remain on the land. Landowner's second argument was merger—that when the easement holder also held the other rights to the land that the ownership becomes fee simple and the easement merges into the title of the property. However, the trial court dismissed this argument stating that Landowner bought the land "subject to all liens and easements against it." Because of this, Caretaker's easement is still valid. The appellate court affirmed the trial court's decision and reasoning.

North Dakota

Krenz v. XTO Energy, Inc., 2017 ND 19, 890 N.W.2d 222.

Surface Owner had several tracks of land above where energy company ("Company") owned the severed mineral interests. Company had acquired easements to run pipes across Surface Owner's land by purchasing them from another oil and gas company. This predecessor company had received an easement that granted a right to run one pipeline across the land. It was unclear whether this meant one pipeline per tract of land or one pipeline for all the tracts of land. When Company began installing a second pipeline, Surface Owner sued for trespass, and the trial court granted an $800,000 damage award. Company appealed on two grounds: (1) that the easement was not limited to one pipeline for all the tracts, rather one pipeline per track, and (2) that $800,000 was too large an award when Surface Owner testified the easement was worth $30,000 to move the case back to state court. The appellate court affirmed the lower court's decision that the ambiguous easement agreement should be interpreted to one pipeline for all the tracts and that Surface Owner was not estopped from receiving an $800,000 award, even though he previously testified that the easement was only worth $30,000.

Virginia

Mount Aldie, LLC v. Land Tr. of Va. Inc., 796 S.E.2d 549 (Va. 2017).

Landowner's predecessor conveyed to Grantee a conservation easement ("Easement") as to certain forested land. The Easement designated a narrow riverside strip as a "riparian buffer." After acquiring the property, Landowner performed tree removal and grading work within the buffer area. Grantee then sued, arguing that Landowner's work within the buffer amounted to a breach of the Easement. The trial court agreed and approved Grantee's motion for summary judgment, reasoning that the type of work

Landowner performed required notice to and approval from Grantee under a certain Easement provision. Landowner appealed, arguing that a different provision was controlling. The state supreme court agreed and reversed and remanded for further proceedings. The court concluded that Landowner's selective cutting and removing of dead and diseased trees in an existing clearing did not amount to a "new opening or clearing" under the Easement provision the trial court applied. The court also noted that a different provision, one not requiring notice, governed Landowner's activities within the buffer and was not constrained by the provision the trial court applied. Finally, the court stated that Grantee did not have exclusive control over the riverside trail within the buffer.

Other Land Issues – Federal

Federal Claims

James v. United States, 130 Fed. Cl. 707 (Fed. Cl. 2017).

Landowners along a 12.8 mile stretch of railroad sued the government for violating the Fifth Amendment's just compensation clause when the government took their reversionary property interest along the railroad. Landowners argued that when the railroad was originally built, Owner acquired only a prescriptive easement through eminent domain, not full ownership rights. In January 2012, Owner filed a Notice of Exemption that it was going to abandon that 12.8 miles of railroad, as no traffic had moved over the line within the last two years, and that it would be abandoned by January 2013. The January 2013 deadline for abandonment was extended as Owner had entered into negotiations with a city and subsequently a non-profit to turn the land at issue over to them under a Notice of Interim Trail Use ("NITU"). The negotiations ended in October 2015, when the non-profit gave up its interest in the NITU. Landowners claimed that they still owned the land at issue and that entering into the NITU with the city amounted to taking their property without just compensation. The court granted a partial summary judgement in favor of Landowners holding that the issuance of the NITU did constitute taking their revisionary interests in the land and that compensations should be based on the time that the NITU was first granted.

4th Circuit

Va. Uranium, Inc. v. Warren, 848 F.3d 590 (4th Cir. 2017).

Following discovery of the largest-known uranium deposit in the United States, a state legislature banned conventional uranium mining. Various proposals for a permit scheme failed, leaving the moratorium intact. Congress thereafter amended the federal Atomic Energy Act ("Act"), which regulates nuclear power generation in the United States. Miners then sued state officials ("Officials"), arguing that the Act preempted the state's uranium mining ban. The federal district court granted Officials' motion to dismiss, reasoning that Congress did not intend to regulate "nonfederal uranium deposits or their conventional mining" through the Act. Miners appealed, offering various ways they believed the Act preempted the state ban. The Fourth Circuit affirmed the district court. First, the court concluded that conventional uranium mining is not an "activity" regulated by the Act. Next, the court noted that the power to regulate mining has historically been reserved to the states and nothing in the Act suggests Congress aimed to strip the states of that power. Last, the court concluded that Congress's objectives in passing the Act were not materially affected by the state's ban. A lone judge dissented, and the miners have filed a petition for writ of certiorari in the Supreme Court of the United States. This writ is undecided at the time of publishing.

Other Land Issues – State

Indiana

Boyland v. Castle Farms, Inc., 71 N.E.3d 81 (Ind. Ct. App. 2017).

Farmer sued Neighbor for trespass, and Neighbor cross claimed for trespass and adverse possession of the disputed land. Adjacent landowner intervened, as its chain of title contained a similar disputed strip of land with Farmer. The trial court ruled in favor of Farmer and found that the survey received in the initial purchase by Farmer transferred title to it. In addition to the initial transfer of the disputed strip of property, the court examined the adverse possession standard for Neighbor to have taken title to the disputed land. The appellate court explicitly viewed the requirement for a would-be adverse possessor to pay all property taxes during the adverse possession period. Farmer paid, or had a good faith belief that it paid, all taxes associated with the strip from the time of purchase through

the present. Property records revealed that Farmer acquired initial title to the disputed land, and Neighbor failed to adversely possess the land in accordance with state law.

Louisiana

Hackett v. Murphy Expl. & Prod. Co. USA, No. 16-707, 2017 WL 1002926 (La. App. 3 Cir. 3/15/17).

Property Owner recently solidified its acquisition of land through an ambiguous 1921 deed that conveyed the land, including an area beneath a public road. The court determined that Property Owner rightfully owned this land under the public road as determined in a separate action. A Production Company ("Company") had previously sold the mineral rights of the property that were then determined to be owned by Property Owner. Property Owner brought action for payment of proceeds from the sale of mineral interests beneath the road. The court determined that Property Owner was entitled to damages from the sale of the mineral interests, but that the proceeds were limited to the last ten years by liberative prescription. Property Owner claimed that Company failed to meet its obligation to ascertain ownership of the materials, which precludes the running of prescription. Property Owner also claimed that the doctrine of *contra non valentem* (which states that prescription does not run when legal action was specifically prevented by defendant) prevented the liberative prescription limitation from being used. However, the court determined that neither claim was sufficient to overcome the state's liberative prescription and calculated damages by the previous ten years' proceeds gained from the sale of the mineral interests.

Texas

BNSF Ry. Co. v. Chevron Midcontinent, LP, No. 08–16–00119–CV, 2017 WL 1076540 (Tex. App. Mar. 22, 2017).

Operator struck oil beneath railroad tracks, and railway company ("Company") sued for trespass to try title. Company argued that its predecessor's 1903 deed ("Deed") gave it the entire strip of land in fee simple, rather than merely an easement. The following discrepancy undergirded the dispute: The Deed's granting clause described a "right of way" over a "certain strip of land," but the habendum clause stated the grantee owned the strip "in fee simple." The trial court granted summary

judgment for Operator, and Company appealed. The court of appeals first noted that "right of way" can mean two different things in a railroad deed: (a) a right respecting the land, or (b) the land itself. Thus, it was not dispositive that the granting clause used the phrase "right of way," and the clause was ambiguous. The court explored the Deed's remaining provisions for insight as to the grantor's intent and ultimately sided with Operator. The court highlighted the fact that the grantor also deeded the right of "taking and using" all wood, water, stone, and timber on the strip. Such language "would have almost been absurd" if a fee simple absolute had been intended. Thus, the court affirmed the trial court and concluded that the habendum's "fee simple" language contradicted the overall intent of the Deed.

Great N. Energy, Inc. v. Circle Ridge Prod., Inc., No. 06-16-00015-CV, 2017 WL 1089804 (Tex. App. Mar. 22, 2017).

Production Company brought multiple actions against Energy Company. Production Company sought to quiet title in a parcel of land that Energy Company claimed an interest in. To quiet title in Texas, the court considers the strength of the proponent's title, not the weakness of the adversary's title. Here, Production Company showed that its title came from the trust which previously held the land and that Energy Company's interest came from Production Company, not the trust. Because Production Company had a strong record of its title, it prevailed in the quite title action. Production Company's argument was strengthened by Energy Company's claim to have received its interest from the same trust as Production Company but it lacked the record to prove that ownership.

Oregon

Stop the Dump Coal. v. Yamhill Cty., 391 P.3d 932 (Or. Ct. App. 2017).

A landfill petitioned the county to expand that operation in an area then designated for use as farmland and would change the floodplain in the area. Coalition petitioned to stop the expansion of the landfill, citing a significant change in accepted farm practices or increase in cost for the surrounding farmland, which is the standard that must be overcome to change the zoning from farmland to non-farmland. The main concern to the accepted farm practices was the amount of trash on the surrounding farmlands due to litter and wind. The court described a significant change in practice or increase in cost to be one that will "significantly affect the preservation of productive

agricultural land for, among other things, the purpose of obtaining a profit in money and providing food." The suggested litter patrol and cleanup did not meet the standard for a significant change in the eyes of the lower court or the appeals court. The court also found that to require fencing around the landfill is sufficient in mitigating the concerns of trash travelling by wind to farmland despite a lack of requirement for height or style of fence. Mitigating conditions are also sufficient to reduce for the effect of other minor concerns, such as nuisance birds attracted to the landfill coming onto the farmland. Ultimately, the court denied Coalition's petition to stop the expansion of the landfill.

SELECTED ELECTRICITY DECISIONS

Traditional Generation

Indiana

Citizens Action Coal. Of Ind. Inc., S. Ind. Gas and Elec. Co., 70 N.E.3d 429 (Ind. Ct. App. 2017).

Utility company ("Company") petitioned state regulatory commission ("Commission") for permission to modify four coal-fired energy plants to bring them into compliance with EPA emissions standards. Environmental organizations ("Organizations") challenged the initial and secondary approval by Commission of the clean coal technology. Specifically, Organizations argued for the record to be reopened and new evidence introduced regarding two of the four projects. Organizations argued that Company should replace existing coal-fired plants with alternative energy sources, such as natural gas, wind, or solar. On a secondary review of the proposed project, Commission again approved the implementation of the clean coal technology, denying Organizations' request to reopen the record or take new evidence on the matter. Although the expert witnesses of the respective sides disagreed regarding future energy production models, the court held Commission did not make a clear error in its decision to approve the projects based on the totality of the evidence. Nor did the failure to reopen the record or review new evidence constitute a clear error, as the secondary review was solely to make sure that the projects complied with a different state code provision related to energy projects, not to evidence gathering mechanisms. Therefore, the appellate court approved the findings of the regulatory commission in favor of Company.

Renewable Generation

Federal Claims

Entergy Nuclear Generation Co. v. United States, 130 Fed. Cl. 466 (Fed. Cl. 2017).

Two nuclear plant operators ("Prior Operator" and "Current Operator") originally sued the Department of Energy ("DOE") in 2008 for a partial breach of contract pertaining to DOE not disposing of Spent Nuclear Fuel ("SNF"). In this original suit, the court awarded Current Operator about $4

million in damages. The court dismissed Prior Operator's claim for lack of ripeness as the decommissioning process had not been commenced, which would be used as part of the basis of recovery for Prior Operator. In 2015, Current Operator again sued DOE for its continued breach of contract in failing to dispose SNF from 2009 to 2015. In 2016, Prior Operator also again sued DOE, stating that its damages were now ascertainable, as Current Operator had begun the decommissioning process by giving a final date of operation for the plant. The court ruled that Current Operator had standing and denied DOE's motion to stay discovery. The court also dismissed Prior Operator's suit without prejudice after finding that setting a final date for plant operation was insufficient to consider the decommissioning process to have commenced.

Sacramento Mun. Util. Dist. v. United States, 130 Fed. Cl. 735 (Fed. Cl. 2017).

A publicly owned municipal utility district ("District") entered a contract with the Department of Energy ("DOE") under the Nuclear Waste Policy Act ("NWPA") that required DOE to dispose of spent nuclear fuel ("SNF") and high-level waste ("HLW") in 1998. In 1998, the Federal Circuit determined that the failure to begin disposing of the waste was a partial breach of contract. The court determined that the breach, along with other related cases, meant DOE owed costs for storage of SNF and labor costs but not for the movement from one storage site to another, overhead, internal labor, contracts, and legal costs. This action was brought on the same contract but for the years between 2010 and 2015 when District had to continue paying for cleaning, rental, and operating costs when it would have exited the nuclear energy industry by 2009 if DOE had begun disposal on schedule. District sued for damages to recover costs from maintaining and operating two buildings, site consolidation, water and septic system upgrades, backup generator, replacing heating and ventilation, new carpet, replacing electrical infrastructure, maintaining an interim storage building, refurbishing fuel-handling equipment, and insurance brokerage fees. The court found that DOE breached the contract and that the District would be entitled to recovery for most of these costs even outside of a breach claim. All listed costs were recovered in damages, but DOE was entitled to an offset for the sum District received in insurance refunds. The damages owed by DOE totaled more than $28 million.

Indiana

Flat Rock Wind, LLC v. Rush Cty. Area Bd. of Zoning Appeals, 70 N.E.3d 848 (Ind. Ct. App. 2017).

Company wished to install a ninety-turbine wind farm, with over sixty of the turbines to be installed in Rush County ("County"). County had a zoning restriction that required that all turbines be set back from the property lines of nonparticipating land owners by at least 1000 feet. In applying to construct the wind farm, Company proposed a setback of 1400 feet from any nonparticipating property line. The County Area Board of Zoning Appeals ("ZBA"), after hearing from County residents that opposed the project, ruled that the setbacks had to be 2300 feet from the nonparticipating property lines. Company appealed this decision as the zoning ordinance stated that the turbines had to be "a minimum of 1000 feet." The court held that the ordinance having "minimum" in the zoning requirement gave ZBA the authority to extend the requirements, within reason, to preserve the health and safety of the public. The trial and appellate court upheld ZBA's 2300-foot setback requirement.

Rates

Florida

Citizens v. Graham, 213 So.3d 703 (Fla. 2017).

Office of Public Counsel ("OPC") sought judicial review of the State Public Service Commission's ("Commission") decision to grant State Public Utilities Company's ("SPUC") request to recover certain costs as "fuel adjustment costs" associated with constructing a new interconnection with another electric utility. SPUC is an investor-owned electric utility that relies on power purchase agreements between it and wholesale energy producers. In August 2014, SPUC entered a settlement agreement ("Agreement") with OPC for a pending petition requesting an increase in base utility rates. The Agreement prohibited SPUC from increasing its base rates until at least December 31, 2016. Another section titled "Other Cost Recovery" specified which costs SPUC could recover through other mechanisms. One year after entering the Agreement, SPUC petitioned Commission to recover costs for its fuel adjustments and purchased power from January 2016 through December 2016, which contradicted the terms of the 2014 Agreement with OPC. SPUC wanted to recover costs associated with construction of a new

interconnection with another wholesale provider. Commission's staff, agreeing with OPC and the terms of the Agreement, recommended that Commission deny SPUC's request. Despite these recommendations, Commission approved SPUC's request, addressing and analyzing the Agreement's applicability to a separate issue relating to SPUC's ability to recover costs with the protect. The Florida Supreme Court determined that Commission violated state law when it failed to address whether the Agreement precluded recovery of such costs. And any costs associated with actual construction of the physical transmission structures on the interconnection were not recoverable because the "Other Cost Recovery" section of the Agreement includes Commission's fuel clause proceedings.

SELECTED TECHNOLOGY AND BUSINESS DECISIONS

Merger and Acquisition

Delaware

Williams Cos. Inc. v. Energy Transfer Equity, L.P., No. 330, 2016, 2017 WL 1090912 (Del. Mar. 23, 2017).

Acquiree sought enjoin Acquiror, both in the gas pipeline business, from terminating a merger agreement ("Agreement") between the two parties. The Agreement contained two steps and was conditioned upon a tax opinion to ensure neither step represented a taxable event for either party. The chancery court found that Acquiror's only duty was to not obstruct the performance of the Agreement. In addition, the chancery court found that Acquiror did not unreasonably omit or fail to diligently obtain the tax opinion on which the parties conditioned the Agreement. Additionally, the chancery court found that the law firm tasked to issue the opinion made a good faith determination to not issue the tax opinion. The appellate court affirmed the lower opinion with one caveat. The Delaware Supreme Court held that the chancery court adopted too narrow of a view regarding the Acquiror's obligations imposed by the Agreement, and if Acquiror breached those implied covenants of the Agreement, Acquiror bears the burden to show these breaches did not cause the failure to close. However, the court found that even under this higher standard, Acquiror met its burden to show that its breaches did not materially cause the failure of the Agreement closure.

Other Issues

Louisiana

Cameron Parish Police Jury v. All Taxpayers, 2017-55 (La. App. 3 Cir. 2/21/17); 212 So.3d 663.

The Parish Police Jury ("Police Jury") and the Parish School Board ("School Board") executed a Cooperative Endeavor Agreement and Payment in lieu of Taxes Agreement (collectively "Agreements") with gas company ("Company"). Agreements allowed Company to pay as their property taxes a fixed dollar amount to the Parish rather than pay a percentage of the land value. The Parish assessor sued, claiming that

Company was required to pay a percentage of its land value in taxes and that the Agreements were invalid and unconstitutional. Police Jury and School Board claimed that state law permitted these Agreements, rendering their Agreements with Company valid. Aside from execution issues with the Agreements themselves, the court ruled in favor of the Parish assessor by finding that, under the state constitution, the statutes could not apply to for-profit enterprises like Company, but only to enterprises owned by non-profit organizations. The Agreements with Company were struck, requiring it to pay a percentage of its property value in taxes.

Texas

Valero Refining-Texas, L.P. v. Galveston Cent. Appraisal Dist., No. 15-0492, 2017 WL 727276 (Tex. Feb. 24, 2017).

State law provides that "'[t]axation shall be equal and uniform'" and that "'a property is appraised unequally if [its] appraised value . . . exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.'" In evaluating taxes in the state, large and complex properties can be broken down into separate accounts containing different pieces of the property within the accounts, as long as each has its own tax account number and District gives the owner notice of what property is a part of each tax account. According to Refinery, District improperly assessed Refinery's taxes in two ways. First, it argued that its property as a refinery should be assessed in comparison to two other refineries in the county, as they are similar properties, and should not be assessed independently from the others because of their size. Second, it argued that District not only improperly assessed the value of the pollution control equipment ("PCE"), but that it was also its own separate account and therefore its value should be excluded from the accounts at issue. The jury found for Refinery and the district court awarded it attorney fees and a refund of almost $5 million. The appellate court reversed, stating that there was no evidence to support the jury verdict based on the exclusion of PCE, and remanded to district court for a new trial on the unequal appraisal. The parties appealed to the Texas Supreme Court, which found that there were enough facts to show Refinery was similar to the other two refineries and therefore should be compared to them and that because PCE can be appraised separately, it should not be included in the appraisal of other accounts. The court reversed and remanded the case to resolve factual issues and held that if Refinery prevails it is entitled to attorney fees.

SELECTED ENVIRONMENTAL DECISIONS

Federal

1st Circuit

Berkshire Envtl. Action Team, Inc. v. Tenn. Gas Pipeline Co., 851 F.3d 105 (1st Cir. 2017).

According to the Natural Gas Act ("NGA"), companies looking to build a natural gas pipeline must first get approval from Federal Energy Regulatory Commission ("FERC"). Under the Clean Water Act ("CWA") if discharge may occur in navigable waters, companies must also receive "a certificate from the State in which the discharge originates or will originate." In July 2014, Company petitioned FERC for permission to build a natural gas pipeline. FERC granted the petition in March 2016, subject to several conditions, including that Company obtain State approval. Previously, in June 2015, Company applied for a certificate with the correct state agency ("Agency") and received a conditional certificate in June 2016. Company could not begin any work under the certificate until the Appeal Period expired. Environmental Group filed notice of hearing within the Appeal Period, which Company sought to stay, arguing that because Agency had given Company a conditional certification, State involvement had ended and any review of Agency's decision must take place in court. Agency denied Company's request to stay further proceedings and scheduled a final hearing date. Company sued, seeking to bar further review by the Agency, while Environmental Group sued to preserve review of the conditional certificate and argued Company's view was wrong such that any review before Agency completed its adjudicatory process was premature. The court agreed with Environmental Group that it should restrict its review of agency action to final agency action, and therefore dismissed the case for lack of subject matter jurisdiction.

4th Circuit

Blankenship v. Consolidation Coal Co., 850 F.3d 630 (4th Cir. 2017).

Company owns a mine that needed "dewatering" and so it sought to pump its excess water into another mine that had been exhausted already. Company applied for the proper revisions in its mining permit for the state, gave formal notice to the Mine Safety and Health Administration

("MSHA"), and published notice of its application for such permit in the local newspapers and courthouses. The state agency approved the application and Company dewatered its mine into the exhausted mine from 1994 – 2003. One set of Landowners, who's property was partially over the exhausted mine, filed suit against Company in 2011 in state court, and then withdrew its suit and refiled in federal court in 2013. Another set of Landowners in the same property position filed their first suit in state court in 2013, and withdrew and refiled in federal court in 2014. Both sets of claims were based on state law claims such as trespass and nuisance. The district court granted Company's motion for summary judgment for both claims citing that the state's statute of limitations, which begins when the injury has occurred, had run on such claims, and that the Comprehensive Environmental Resources, Compensation and Liability Act's ("CERCLA") discovery rule of tolling state statute of limitations until plaintiffs know or reasonably should know of such injury did not toll the statute of limitations because there was no claim arising under CERCLA. The appellate court affirmed, stating that no harms formed a basis for a CERCLA claim, and therefore, its discovery rule that would have tolled the statute of limitations did not apply, so Landowners' claim was barred as it fell outside the applicable statute of limitations.

5th Circuit

Abbot v. BP Expl. & Prod., Inc., 851 F.3d 384 (5th Cir. 2017).

Former employee ("Employee") and environmental organization ("Organization") sued an oil company ("Company") under federal law for alleged false compliance with regulatory schemes for an offshore production operation. The trial court granted Company's motion for summary judgment. On appeal, the court reviewed the requirements of the applicable federal statutes and whether or not a genuine issue of material fact existed as to the requirements. The federal government vigorously investigated the Employee's and Organization's claims and found no violation of compliance requirements. Additionally, Employee and Organization failed to plead an individualized injury as the result of the claimed failure of compliance. The appellate court, therefore, affirmed the trial court's grant of summary judgment in favor of Company.

9th Circuit

Hopi Tribe v. EPA, 851 F.3d 957 (9th Cir. 2017).

EPA underwent the rule making process to change the standards of coal energy generating facilities, one of which was owned by Tribe. Because the new rule will eventually lead to a shutdown of Tribe's facility, Tribe sued EPA because it failed to include Tribe in the Technical Working Group negotiations ("TWG"), which is one step of many required for EPA to pass a new rule. Tribe was invited to all other rule making meetings by EPA, but because it was not invited to TWG, Tribe stated that EPA violated its "trust" responsibilities to Tribe. The court ruled without analyzing the potential trust violation, as it was the Department of the Interior ("DOI") who ran the TWG negotiations and thus it would have been DOI's responsibility to invite Tribe to TWG. Because Tribe failed to sue the DOI, the new EPA rule stands.

Yazzie v. EPA, 851 F.3d. 960 (9th Cir. 2017).

Several Native American tribes ("Tribes") and non-profit environmental organizations ("Organizations") sought review of EPA source-specific Federal Implementation Plan ("FIP") under the Clean Air Act ("CAA") for the largest coal-fired power plant ("Plant") in the western United States, which happens to be on a reservation. The Plant emits gases that cloud visibility (including in the Grand Canyon) but also provides significant revenue and jobs for one of the Tribes while helping distribute more than 20% of the state's water. Because Tribes did not issue a Tribal Implementation Plan ("TIP") for the Plant, EPA issued its FIP, including an option for the best available retrofit technology ("BART"), which is required of states determining available reduction of haze from a source unless they have a "better than BART" alternative. Organizations petitioned for a new plan, claiming that the five-year window to implement the BART had passed. Here, the FIP implemented a better than BART alternative, which the court determined did not have the same time limits for implementation, and denied that part of the petition. The petition also claimed that the "better than BART" alternative was favored in giving too many emission credits in the calculation. However, the court found that the alternative would reasonably have more emission credits because of its quicker installation. The court denied this section of the petition also because EPA acted arbitrarily and capriciously in its FIP under these circumstances.

State

California

Protect Our Cmty. Found. v. Black, 2017 WL 882278 (S.D. Cal. March 6, 2017).

Environmental group ("Group") sued the Bureau of Indian Affairs ("BIA") for not conducting an adequate environmental impact statement ("EIS") before approving the installation of wind turbines in an area inhabited by endangered eagles. The director of BIA used an EIS that had been prepared previously without making any alterations. This EIS was used to approve the installation of the turbines. Under the Administrative Procedure Act, the BIA is allowed to use EIS produced by other agencies. Group sought an injunction on the project, demanding that the BIA produce its own EIS, or at the minimum, produce a statement that included data post-2011, when the EIS was conducted. The court ruled in favor of BIA, stating that the EIS was sufficient. This case has been appealed to the Ninth Circuit.

Colorado

Martinez v. Colo. Oil & Gas Conservation Comm'n, No. 2017 COA 37.

State residents petitioned a state oil and gas conservation commission ("Commission") to propose a rule that would require Commission to consider the "best available science" and receive confirmation by a third-party organization before issuing any drilling permits in the state. The residents sought to ensure that future drilling operations did not negatively impact the State's environment or the well-being of its residents. After soliciting comments on the proposed rule, Commission denied the petition because the proposed rule was beyond its scope of authority and contrary to the state's Oil and Gas Conservation Act ("Act") from which Commission received its authority to regulate oil and gas production in the interests of public health and safety. The residents appealed to a state appellate court. And the dispute turned on the interpretation of "in a manner consistent with" under a provision of the Act. The appellate court concluded that both Commission and the lower court misinterpreted the plain meaning of "in a manner consistent with" by concluding that the Commission must "balance" the interests supporting oil and gas development "in a manner consistent with" the protection of public health and welfare when promulgating new rules under the Act. Rather than implying a balancing

test, the appellate court interpreted the plain meaning of "in a manner consistent with" to indicate a "condition" that the Commission *must fulfill* based on similar interpretations of such language from the state supreme court and the commonly understood use of the phrase in state statutes. Thus, the plain meaning of "in a manner consistent with" means that Commission must complete development that is subject to the protection of public health and welfare of its residents. The appellate court remanded the dispute to Commission.

Louisiana

Sweet Lake Land & Oil Co. v. Oleum Operating Co., No. 16-429, 2017 WL 914767 (La. App. 3 Cir. Mar. 8, 2017).

Lessor sued Lessee, Lessee's predecessor-in-interest ("Predecessor"), and Lessee's successor-in-interest ("Successor") for failure to comply with oilfield cleanup provisions and remediating under the leases. A jury found Lessee responsible for oil field cleanup on Lessor's property and concluded that Predecessor and Successor bear no responsibility under the lease provisions. Lessor appealed regarding the obligations of Predecessor and Successor and the dollar amount required in remediating the property. The lease language clearly established the obligation of Predecessor and Successor to conduct cleanup efforts on the property. The appellate court remanded the case to establish the dollar figure required to remediate the property, and the respective amount to be paid by Lessee, Predecessor, and Successor.

Missouri

Swallow Tail, LLC v. Mo. Dep't of Conservation, WD 79560, 2017 WL 892549 (Mo. Ct. App. March 7, 2017).

Company sued the state department of conservation ("Department") and a non-profit conservation foundation ("Foundation") for improper use of public funds for private benefit in the "design, support, and operation of a compensatory mitigation program." The state constitution prohibits the state government (including Department) from using public funds to the benefit of private entities. Company claimed that Department gave Foundation a higher amount of mitigation credits upon completion of Department's conservation projects. Foundation is designed specifically to provide grants to Department's projects that are deemed high priority to

ensure timely completion. The court determined that use of Department funds for the public purpose of environmental conservation determines that any private benefit to Foundation providing grants for that same purpose is incidental the public benefit from that conservation project.

Utah

Friends of Great Salt Lake v. Utah Dep't of Nat. Res., 2017 UT 15, 393 P.3d 291.

The Utah Department of Natural Resources ("UDNR") granted a minerals corporation ("Mineral Corp") a lease to mine on sovereign state lands. An environmental group ("Group") sued to prevent Mineral Corp from mining on the land it had obtained in the lease. Group brought numerous claims, attempting to prevent the mining. Group requested an agency action and declaratory order which would have removed Mineral Corp's lease to mine completely. However, the court held Group did not have standing or a legal basis to receive this relief. Group also sued on the grounds that Mineral Corp did not complete site-specific planning on its mining operations. The court held that Group had limited standing to demand site-specific planning on the mining operations. Thus, the court, while denying Group's requests for extraordinary relief, held that Mineral Corp must produce site-specific plans of its mining operations for approval before commercializing the property.

Virginia

Forest Lakes Cmty. Ass'n, Inc. v. United Land Corp. of Am., 795 S.E.2d 875 (Va. 2017).

Two property owners' associations ("POAs") sued the owners and developers of a commercial shopping center ("Shopping Center") claiming that its sediment basins were discharging sediment into a creek that flowed into a lake owned by the POAs. Construction of the shopping center began in 2003, and the sediment basins used in the construction were complete by 2004, complying with both local and state regulations. The POAs complained to the County about the sediment basin discharge, but the County ultimately rejected the suggestion for more robust controls. The POAs discussed the need for legal action in 2004 and 2005 but did not file such action until 2011. The appellate court dismissed the action stating it was barred by the statute of limitations which began to toll with the

beginning of construction of the sediment basins causing discharge, which occurred in 2004. The Virginia Supreme Court upheld the appellate court's decision, citing that state law on recurring injury from permanent structures had long held that the statute of limitations began to run when the injury was first sustained, even if the injury is continuous and regular.