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Recent Case Decisions

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RECENT CASE DECISIONS

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Table of Contents

All case citations are as of 7-24-2018. 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 6-14-2018. This PDF version of the newsletter is word-searchable. If you have any suggestions for improving the Newsletter, please e-mail the editorial staff at ou.mineral.law@gmail.com.

SELECTED OIL AND GAS DECISIONS

Upstream – Federal

6th Cir.

Encana Oil & Gas (USA) Inc. v. Zaremba Family Farms, Inc., 16-2065/17-1429, 2018 WL 2446698 (6th Cir. May 31, 2018).

Oil Operator sued Mineral Owner, seeking the return of $1.8 million of the $2 million that had been exchanged upon the agreement between the parties to negotiate a binding lease agreement. Because the intended agreement between Oil Operator and Mineral Owner failed to come to fruition, Oil Operator requested the $1.8 million and subsequently sued Mineral Owner for breach of contract. Contrary to the unquestioned prior agreement between the parties, an employee of Oil Operator mistakenly told Mineral Owner that it could keep the entirety of the $2 million. After this dispute arose, Oil Operator was accused of violating the Sherman Antitrust Act and the Michigan Antirust Act by working with other operators to avoid bidding wars over lease prices in Michigan. On appeal, the Sixth Circuit Court of Appeals held that Mineral Owner failed to prove the antirust conspiracy and ordered the return of the $1.8 million. Despite Oil Operator employee's mistaken communication, the appellate court held that the communication did not rise to the level of a contract waiver since, under Michigan law, a waiver requires consideration.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

D. New Mexico

Cibola Energy Corp. v. U.S. Dep't. of Interior, No. 12-cv-1099 MCA/LFG, 2018 WL 2337137 (D.N.M. May 23, 2018).

Operator appealed Bureau's decision, alleging that Bureau acted arbitrarily and capriciously when it ordered Operator to conduct production tests on a well after Operator applied for the well to be assigned "temporarily abandoned" status. The well was completed in 1990 and never produced. It was last tested for production in 1990, and the test indicated that production was "marginal." In 2011, Operator applied for a "temporarily abandoned" status to the well in order to maintain the lease on the well's land. Bureau

determined that even if a well is not producing, it must be capable of producing in paying qualities to avoid termination of the lease. The phrase "capable of production" means a well that is actually in a condition to produce at the particular time in question. Operator sought to rely on the 1990 test to prove this "capable of production" status, but Bureau ordered new testing to determine whether there were unknown changed conditions in order to decide whether to extend the leases. The district court held that this new data was necessary to determine the current status of the well. Therefore, it was not arbitrary or capricious to order new production tests, and the court upheld Bureau's decision.

Diné Citizens Against Ruining Our Env't v. Jewell, No. CIV–15–0209 JB/SCY, 2018 WL 1940992 (D.N.M. Apr. 23, 2018).

Environmental Organization filed suit against Government Entities for violating the National Environmental Policy Act ("NEPA") by failing to consult with particular affected parties before approving drilling permits for Third Party Drilling Company. After the trial court denied Environmental Organization's motion for preliminary injunction to prevent enforcement of Government Entities' authorization of drilling permits, and the subsequent affirmation by an appellate judge, Environmental Organization filed for a review on the merits and a permanent injunction. The United States District Court for the District of New Mexico found that: (1) Environmental Organization's allegations of an increased environmental risk and aesthetic injury were concrete enough injuries to constitute standing and were fairly traceable to Government Entities' alleged failure to adhere to the NEPA; (2) Government Entities' analysis of the potential impacts of the drilling was proper and complied with the NEPA; (3) Government Entities complied with the NEPA's requirement for public involvement by placing information about the proposed wells on its website, along with extending invitations to the public to meetings regarding the wells; (4) Government Entities' delay in furnishing its environmental assessments did not violate the NEPA because the assessments were available "promptly upon request"; (5) the location and potential impacts of the drilling did not require Government Entities to perform any further notification or consultation, because it would not adversely impact the groups in question; and (6) even if the alleged harm did occur, a preliminary injunction would be the improper remedy because "the presumption favors vacatur and, in this case, vacatur more properly addresses the harm." For those reasons, the court denied Environmental Organization's request for review and injunction and dismissed the claims with prejudice.

This case has since been appealed, but there is no decision from the higher court as of publication.

N.D. Ohio

Kerns v. Chesapeake Expl., LLC, No. 5:18 CV 389, 2018 WL 2952662 (N.D. Ohio June 13, 2018).

Property Owners filed suit against Operator and Ohio Department of Natural Resources ("ODNR") for due process violations regarding the taking of Property Owners' mineral interests after Operator commenced horizontal drilling, which obtained oil and gas from underneath Property Owners' land. The district court found that: (1) regardless of whether Property Owners actually held the mineral interests in question, they had standing to bring suit because their allegations encompassed claims that Operator's actions also interfered with the use of the surface land; (2) because Operator would not have been subject to the state's required mandamus action for such a complaint, Property Owners' failure to utilize that avenue for compensation did not prevent this case from being ripe for review; (3) because Property Owners could not adequately allege that Operator was acting under the color of state law in a fashion that made it a state actor, their claims for violation of the Fifth and Fourteenth Amendments should be dismissed; (4) because Property Owners' suit alleged an ongoing violation of federal law and also sought prospective relief, ODNR was not immune from suit via its status as a state actor; and (5) the Ohio law authorizing the taking in question was not unconstitutional because the state has a right to reduce waste when it comes to oil and gas. For those reasons, the court found that Property Owners failed to state a claim under the Fifth or Fourteenth Amendment, and accordingly granted Operator and ODNR's Motions to Dismiss.

N.D. West Virginia

Packard v. Antero Res. Corp., No. 1:18CV04, 2018 WL 2348398 (N.D. W.Va. May 23, 2018).

Lessors sued Lessee claiming that their oil and gas leases did not contain pooling authorization, and, despite the lack of authorization, Lessee drilled producing horizontal wells crossing through the Lessor's three tracts of land and pooled their minerals. Lessors claimed trespass, breach of contract, and

breach of the implied duty to protect against drainage. The district court determined that Lessors trespass claim was barred by West Virginia's gist of the action doctrine, which prevents the presentation of a contract issue as a tort action. Because Lessors did not claim that Lessee could not enter the property to drill, just that they could not pool, trespass was not appropriate. Next, the court addressed the breach of contract claim and refused to dismiss Lessor's claim, finding that the leases did not contain the express right to pool and that the law did not yet recognize an implied right to pool as Lessee argued. Lastly, the court addressed the implied covenant to protect against drainage and found that Lessors claims were without merit because they were not alleging that Lessee was draining neighboring property..

Bounty Minerals, LLC v. EQT Prod. Co., No. 1:17cv219, 2018 WL 2749598 (N.D.W. Va. June 7, 2018).

Lessor claimed that the oil and gas lease ("Lease") with Lessee was terminated for lack of production. Lessor's complaint alleged lease termination for lack of production, slander of title, breach of the implied covenant to further explore, and breach of the implied covenant to further develop. Lessee filed a motion to dismiss the claims by Lessor. The district court found that: (1) because the Lease contained a flat rate or shut-in royalty provision, under West Virginia law, whether or not the well was producing was irrelevant, and Lessor's request for Lease termination and ejectment was denied; (2) regarding slander of title, because the Lease had not been terminated, Lessee was not falsely claiming an interest on the property, and accordingly, there was no slander of title; (3) in addressing Lessor's claim of failure by the Lessee to explore further, the court declined to recognize the implied covenant, as no West Virginia court had done so previously; and (4) Lessee had breached the covenant to develop even though the lease was a flat-rate lease.

Upstream – State

Louisiana

Rainbow Gun Club, Inc. v. Denbury Res., Inc., 2017-997 (La. App. 3 Cir. 5/23/18); No. 17-997, 2018 WL 2326189.

Assignor appealed lower court's award of legal interest on awarded damages granted from the date of judicial demand to Lessors for Assignor's

breach of its duty to operate as a reasonably prudent operator by destroying and preventing access to a gas reservoir. Prior to the lower court's ruling, Lessors had settled with Assignee for the breach of duty. Assignor claimed that the lower court erred in finding them singularly liable since Lessors lost revenue due to Assignees' operations. Additionally, Assignor felt that the lower court erred in calculating their share of the damages, as they claimed Lessors released Assignor from liability by settling damages with Assignees. The Court of Appeal of Louisiana agreed with the lower court because the covenant to operate as a reasonably prudent operator is implied in the lease, and therefore, Assignees and Assignors have equal portions of liability. Additionally, Lessors claimed that the interest should have been granted from the date of the breach rather than the date of the judgment. Here, the court agreed and amended the lower court's judgment to include interest from the date of the judgment.

Ohio

Mid-Ohio Coal Co. v. Brown, No. 17 CA 21, 2018 WL 2254673, 2018-Ohio-1934.

This case involves a dispute as to the proper ownership of a mineral estate. Party-1 contended that Party-2 only owned the rights to subsurface coal, while Party-2 claimed they owned the entire subsurface mineral estate without limitation. The trial court found that Party-2 owned the entire subsurface estate. Upon review, the Court of Appeals of Ohio agreed with the lower court and held that the language of the deed granted the entire subsurface mineral estate, not just the rights to coal.

Texas

Murphy Expl. & Prod. Co.–USA v. Adams, No. 16–0505, 2018 WL 2449313 (Tex. June 1, 2018).

Operator-1 sued Operator-2, seeking damages resulting from the alleged breach of an oil and gas lease stemming from Lessee's drilling of an offset well based on the drilling of a mineral-producing well on adjacent land. Operator-2 posited that the lease did not impose a requirement related to distance and argued that, when the lease was contemplated, horizontal shale wells were the focus and that minimal drainage existed in the shale formation proximate to the well's location. The Texas Supreme Court, in reversing the lower court's ruling in favor of Operator-1, held that the

relevant locations in horizontal drilling are the perforated and fractured regions of the horizontal wellbore. Additionally, the court held that the oil and gas lease between Operator-1 and Operator-2 plainly detailed the specific implications once the offset provision was triggered. Significantly, the ruling reaffirms the standard instituted by courts in enforcing only what is expressly defined in an oil lease regarding the contractual responsibilities of both parties.

Neuhoff v. Piranha Partners, No. 07–16–00136–CV, 2018 WL 2223132 (Tex. App. May 15, 2018).

Assignor and Assignee disputed what property was actually conveyed in Assignment of a properly recorded oil and gas lease. Assignor claimed that Assignment only assigned their overriding royalty interest in a specific well on their section of land to Assignee. Conversely, Assignee claimed that what was assigned was actually an overriding royalty interest over Assignor's entire section. The trial court determined, through the records and evidence, that the assignment covered the entire section not just a specific well. In analyzing the lower court's decision, the Court of Appeals of Texas reviewed the assignments using standard principals of contract construction. After analysis the appellate court found that the assignment only meant to grant an interest in a quarter of the section to Assignee, not the entire section or just the specific well.

TRO–X, L.P. v. Anadarko Petroleum Corp., No. 16–0412, 2018 WL 2372805 (Tex. May 25, 2018).

Assignor filed suit for breach of contract and trespass to try title, claiming that back-in interest on assigned leases to Assignee were not paid. However, the leases that were originally assigned were terminated by Lessors due to a provision in the lease that required an offset well be drilled if a well which was drilled within a certain distance from the boundary of the leased property was produced in paying quantities. Assignee admittedly failed to meet the provision of the assigned lease and the lease was therefore terminated. Assignee then negotiated a new lease with Lessors on the same property as the original and terminated leases. Assignee claimed that the originally assigned leases were top leases and subject to the back-in interest. The trial court agreed with Assignor, but the appellate court reversed. Assignee then appealed to the Supreme Court of Texas. Upon review, the Court set out to determine whether the second leases were intended to be top leases. Only then could Assignors' back-in interest still

be valid. In analyzing top leases and intent, the Court noted that when a new lease is executed on an existing lease by the same parties, the existing lease is terminated, unless intent is expressly shown otherwise. Therefore, the Court found that there was no indication that Lessors and Assignee meant for the original leases to survive after the execution of the second leases. As such, the original leases were terminated along with Assignor's back-in interest.

U.S. KingKing, LLC v. Precision Energy Servs., Inc., No. 01–17–00215–CV, 2018 WL 2638648 (Tex. App. June 5, 2018).

Supplier entered into an agreement with Well Operator to supply oilfield goods and services. When Well operator failed to pay invoices for labor and materials used to drill an oil well, Supplier brought suit against Well Operator for breach of contract, fraud, declaratory relief, and foreclosure of a mineral lien. Well Operator attempted to pierce the corporate veil and hold Supplier's Parent Company liable for Supplier's obligations under an alter-ego theory. The district court found Parent Company jointly liable for the unpaid invoices. Well Operator appealed. On appeal, the Court of Appeals of Texas found that Supplier failed to establish, as a matter of law, that either Well Operator or Parent Company acted with the intent to deceive, nor did Supplier conclusively establish that the use of limited liability was illegitimate or that Parent Company was attempting to use the corporate structure to shield abuses like fraud. As a result, the appellate court concluded that Parent Company was not an alter-ego of Well Operator and, thus, could not be found jointly liable for the actions of Well Operator.

Utah

J.P. Furlong Co. v. Bd. of Oil, Gas & Mining, 2018 UT 22, No. 201550620, 2018 WL 2710963.

Non-Operator challenged an order from Board of Oil, Gas & Mining ("Board") in which it imposed a joint operating agreement ("JOA") with Operator who was operating the drilling unit in which Non-Operator's lease was included. Non-Operator claimed that the JOA was imposed upon it without any modification to the Operator-proposed agreement. Non-Operator felt that there was insufficient evidence to support Board's decision to support the imposition of the JOA. Non-Operator claimed that Board did not give proper reasoning for the failure to adopt their proposed

changed to the JOA. However, the Supreme Court of Utah ultimately found that the adoption of the JOA without any of the Non-Operator proposed changes was appropriate because the JOA was based on the model supplied by the American Association of Professional Landmen ("AAPL") form, and industry standard was to adopt it without significant modification, just as Board had imposed. The court held that there was nothing in the law that required Board to balance the interests of the parties, to which a JOA was being imposed, in the agreement.
Midstream – Federal

2d Cir.

Harry v. Total Gas & Power N. Am., Inc., 889 F.3d 104 (2d Cir. 2018).

Natural gas Investors ("Investors") brought suit against traders of natural gas ("Traders") claiming monopolization and manipulation of natural gas trading in violation of Commodity Exchange Act ("CEA") and antitrust laws. At trial, Traders motioned for dismissal claiming lack of standing and failure to state a claim because Investors failed to allege possibility of injury due to the fact that their own derivatives were not indexed under the markets. The lower court found that there was no harm or intent, and Investors thus failed to state a claim. Investors appealed. On appeal, the Second Circuit Court of Appeals held that while Investors had Article III standing, they failed to state a claim under the CEA or antitrust laws because it was not plausible on the record that they were injured by the manipulations of Traders. Therefore, the court modified the order and judgment to remove the dismissal for lack of standing and affirmed the dismissal for failure to state a claim.

D.C. Cir.

City of Clarksville, Tennessee v. Fed. Energy Regulatory Comm'n, 888 F.3d 477 (D.C. Cir. 2018).

City is a municipality that operates natural gas services in Tennessee and Kentucky, which filed an application with Federal Energy Regulatory Commission ("FERC") to determine its service area in 2013. Upon inspection, FERC discovered that City delivered natural gas through a pipeline to a city in Kentucky ("Alternate City"). Though FERC determined that City's provision of natural gas to Alternate City was permissible under a previous certificate, it informed City that further transport across state

lines would require an entirely different certificate. City claimed that it did not require this certification due to its classification of municipality as defined by the Natural Gas Act ("NGA") and that FERC, therefore, did not have jurisdiction over City. FERC disputed this claim, although it agreed to issue City a special certificate to provide Alternate City with natural gas due to the long-time arrangement and Alternate City's reliance on it. City appealed FERC's determination that it maintained jurisdiction over City and the D.C. Circuit Court of Appeals found that City indeed had standing to challenge FERC's orders, and further, that FERC lacked authority under the NGA to regulate a municipality's natural gas sales.

Midstream – State

Texas

Morello v. Seaway Crude Pipeline Co., No. 01–16–00765–CV, 2018 WL 2305541 (Tex. App. May 22, 2018).

Property Owner filed suit against Pipeline Company to object to Pipeline Company's planned pipeline through property he owned. The trial court found in favor of Pipeline Company, finding that it could condemn easements across the land so long as it made appropriate payments to Property Owner for market value of the land. Property Owner appealed, alleging the trial court erred in finding for Pipeline Company after it failed to show a necessity for the taking and that he had presented sufficient evidence to survive the summary judgment stage. The Court of Appeals of Texas held that: (1) no evidence was provided to support Property Owner's affirmative defenses; (2) Pipeline Company had expressed a sufficient necessity for the takings, espousing on multiple occasions that the purported path was necessary for efficiency and public convenience; and (3) no evidence existed that Pipeline Company acted arbitrarily or abused its discretion in plotting its pipeline's path—neither in violation of existing case law, nor via its failure to supervise its agents' decisions, nor via its refusal to consider Property Owner's requests to alter the path. The court also held that Pipeline Company's amendment to its petition, agreeing to pay a portion of the costs which Property Owner sought to recover, did not act as an abandonment equivalent to dismissal of its condemnation claim. Finally, the court held that the trial court did not err in excluding Property Owner's expert witnesses because their testimony would not have mended the issues with Property Owner's positions that eventually led to the

summary judgment against him. For those reasons, the court affirmed the trial court's judgment.

SELECTED WATER DECISIONS

Federal

9th Cir.

United States v. U.S. Bd. of Water Comm'rs, 893 F.3d 578 (9th Cir. 2018).

Farmers brought suit claiming injury to their water rights as a result of a voluntary water rights leasing program managed by National Fish and Wildlife Foundation ("NFWF"), which was created to convey water from a river downstream to a lake. NFWF applied with Nevada State Engineer ("Engineer") for two change applications to its program: (1) a request changing the place of use to a broader area; and (2) changing the purpose of use from irrigation to wildlife purposes. The farmers objected to these change applications claiming that they violated their "New Land Stored Water Rights" because the changes would decrease the amount of reservoir water available for irrigation. Engineer rejected Farmers' arguments and granted NFWF's application, finding that Farmers would not suffer any injury. Farmers appealed this finding to a Decree court, which rejected the findings of Engineer and found that the program would in fact injure the Farmers' water rights. NFWF and Engineer appealed this finding. On appeal the Ninth Circuit Court of Appeals found that the Decree court failed to give dereference to the findings and conclusions of Engineer. Upon review of the case, the appellate court found that Engineer properly found that: (1) a transfer to the Foundation limited to the consumption portion would avoid conflict and injury to other existing water rights; (2) the findings were supported by substantial evidence; and (3) Engineer applied the correct legal rule. Thus, the court held that there would be no injury to the Farmers' rights.

Mono Cty. v. Walker River Irrigation Dist., 890 F.3d 1174 (9th Cir. 2018).

County appealed the decision of the district court finding that a previously agreed to decree regulating a water basin did not allow for allocation of water from the basin to an area lake. On appeal the Ninth Circuit Court of Appeals found that the district court erred in dismissing County's complaint. Therefore, the court set out to determine whether the decree could be amended to allow for allocation of water flow to the lake. The court felt that this would be determined based upon whether the public trust doctrine was applicable to previously set rights under the doctrine of prior

appropriation and permitted alteration of prior allocations. After review, the court determined that any decision they made would have a significant impact on Nevada water law, but based upon existing Nevada law, the court was unsure how the Nevada Supreme Court would itself resolve the matter. Therefore, the court held that it would need certification of the issue to the Nevada Supreme Court.

D. New Mexico

San Juan Citizens All. v.U.S. Bureau of Land Mgmt., No. 16-cv-376-MCA-JHR, 2018 WL 2994406 (D.N.M. June 14, 2018).

Environmental Organization filed suit against Government Agencies over Government Agencies' decision to lease several parcels of federal mineral estate on federal land, alleging violation of the National Environmental Policy Act ("NEPA"). The district court found that: (1) Government Agencies failed to adequately consider—via a "hard look"—downstream greenhouse gas emissions from the leases, thus requiring remand of the case for a new cumulative impact analysis, and such analysis must be done with up-to-date scientific tools and analyses; (2) because such analyses must be revised, the court declined to examine them specifically; (3) because the evidence upon which Environmental Organization's claim about air quality was based was incomplete, it could not be concluded that Government Agencies failed to take a "hard look" at the cumulative impacts to air quality from the leases; (4) Government Agencies failed to utilize the information in its possession regarding the impacts of the leases on water quantity, and thus, failed its duty to take a "hard look" at that environmental impact; (5) Government Agencies met their "hard look" duty regarding water quality; and (6) the requirement of revised impact analyses prevented the court from addressing the other issues raised by Environmental Organization. For those reasons, the court set aside both the leases and the finding of no significant impact and remanded the matter to Government Agencies for further analysis consistent with the court's findings.

State

Colorado

Jim Hutton Educ. Found. v. Rein, 2018 CO 38M.

Surface Water Owners ("Owners") filed suit against State Engineer over concerns that permitted groundwater wells, which other individuals had begun installing in the groundwater basin under their surface water, had not been pumping designated groundwater, and thus, had been negatively affecting their senior surface water rights. A recent legislative amendment created a rule precluding any redrawn water basin boundaries from excluding any already existing wells, effectively precluding the redress sought by Owners, so Owners' main argument was that the legislative amendment was unconstitutional. The case was filed in Water Court, which dismissed for lack of subject matter jurisdiction because State Commission had not yet determined whether the water in question was designated groundwater. Owners appealed to the Colorado Supreme Court, which held as follows: (1) because the issue did not involve any disputed facts, it would review the question of subject matter jurisdiction *de novo*; (2) because state statutory framework dictates that State Commission has jurisdiction over claims involving designated groundwater, and Water Court has those involving non-designated ground water, Water Court's decision was legally sound; and (3) the unique constitutional nature of Owners' claims did not do enough to overcome their burden of proving that the Water Court should have jurisdiction. For those reasons, the Court affirmed the Water Court's dismissal of the claim for lack of subject matter jurisdiction.

Michigan

Gottleber v. Cty. of Saginaw, No. 336011, 2018 WL 2944211 (Mich. Ct. App. June 12, 2018).

Property Owners filed suit against County after County ceased pumping water from the property due to its decision to use abutting property for a Dredged Material Disposal Facility ("DMDF") and Wetland Mitigation Area ("WMA"), and Property Owners' property subsequently flooded. The trial court found that the DMDF was a federal project, and thus, County had no liability at all for the flooding caused by that project. The trial court also found that the cessation of pumping from the WMA did not constitute an affirmative act necessary to make County liable. Property Owners appealed,

and the Court of Appeals of Michigan held that: (1) the record showed that County was involved with the DMDF from the beginning and still owned the property on which it was housed, thus making it a proper party to Property Owners' claims regarding it; (2) County's removal of pumps from the WMA site constituted an affirmative action, which was enough to constitute liability; (3) Property Owners offered sufficient evidence to clear the summary dismissal threshold regarding why they believed County's actions caused the flooding of the property; and (4) County's argument that it was immune from liability because it was acting in accordance with the United States Army Corps of Engineers was inconsistent with existing authority. For those reasons, the court reversed the trial court's order for summary disposition in favor of County and remanded the issue for further proceedings consistent with its holdings.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

New Hampshire

In re Cook, No. 2017–0142, 2018 WL 2074773 (N.H. May 4, 2018).

Property Owner filed an appeal seeking review of Wetlands Council's decision to uphold Government Agency's denial of Property Owner's permit request to extend his dock onto a local river. The Supreme Court of New Hampshire held that because the key question in this case was whether Property Owner could adequately establish a justification for his dock extension based on a "need," and the term "need" was undefined by the state legislature, the term should be given its plain and ordinary meaning. Because Government Agency did not have the court's guidance in making its initial interpretation of the statute and ruling on Property Owner's permit application, the Court vacated the decision and remanded it to Government Agency for further review consistent with those findings. The Court further held that Property Owner's ability to use an existing dock with "all-tide access" located on an abutting property was irrelevant to the question of whether Property Owner had shown "need" in this particular instance. For those reasons, the question was reversed and remanded for further consideration.

New Jersey

Oaks Dev. Corp. v. Planning Bd. Of Twp. of Old Bridge, No. A-2666-16T2, 2018 WL 1996966 (N.J. Apr. 30, 2018).

Development Company appealed a decision affirming City Government's determination to deny Development Company's application to connect its project with City Government's system without a one-million-gallon water storage tank. The Supreme Court of New Jersey held that City Government's decision was entitled to a presumption of validity, and that presumption, combined with the evidence in the record supporting Government Agency's determination that the development would require additional water storage capacity, was sufficient to justify the affirmation of City Government's decision. Because Development Company failed to introduce evidence that would overcome its significant burden to rebut Government Agency's presumption of validity, the Court affirmed City Government's decision to deny Development Company's application.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

South Carolina

Jowers v. S.C. Dep't of Health & Envtl. Control, No. 2016-000428, 2018 WL 2449220 (S.C. May 30, 2018).

Landowners of property along rivers and streams in South Carolina ("Landowners") brought suit against South Carolina Department of Health and Environmental Control ("DHEC") challenging the registration provisions in the Surface Water Withdrawal Act ("Act"). This provision of the Act allows persons to make surface water withdrawals without a permit if done for agricultural purposes. Landowners challenged this provision claiming that the provision constituted (1) an unconstitutional taking of private property for private use and was a violation of their due process rights by depriving them of their property without notice or an opportunity to be heard; and (2) a violation of the public trust doctrine that forbids the disposal of assets held by the State in trust. The district court granted DHEC's motion for summary judgment after finding that Landowners did not have standing. The court also found that there was no unconstitutional taking of private property because landowners were not deprived of any rights, and subsequently, there was also no violation of due process.

Additionally, the court found that the public trust doctrine was not violated because Landowners never lost their right to use the surface water, and there were no injuries as a result of the withdrawals. Landowners appealed. On appeal the Supreme Court of South Carolina upheld the lower court finding that there was no unconstitutional taking of private party because Landowners failed to show the taking of the property was unreasonable, and regarding the public trust claims, the court found Landowners failed to show that any public trust asset had been lost as a result of agricultural users withdrawing surface water, and any claims of future harms were not justiciable.

Duncan v. Drasites, No. 2016–000046, 2018 WL 2230560 (S.C. Ct. App. May 16, 2018).

Property Owner appealed the ruling of Master-in-Equity that Easement Holder had an easement on Property Owner's property. Master-in-Equity found that: (1) the easement was created to allow the dominant estate access to the lake, therefore burdening the entire property line; and (2) that Easement Holder had the right to launch small watercraft into the lake from the easement. The Court of Appeals of South Carolina held that Master-in-Equity did not err in either determination because: (1) the intent of the grantor could not have been to give Easement Holder an easement that ended just short of the lake (or just at the lake if the water was high); (2) all plats in both parties' chains of title evidenced an easement ending at the water's edge; and (3) the ability to launch small watercraft from the easement was "incident to the enjoyment" of said easement, and therefore was not a burden on the property. For those reasons, the court affirmed Master-in-Equity's decision.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

SELECTED LAND DECISIONS

Federal

8th Cir.

Sisseton-Wahpeton Oyate of Lake Traverse Reservation v. U.S. Corps of Eng'rs, 888 F.3d 906 (8th Cir. Apr. 25, 2018).

Tribe claimed that U.S. Corps of Engineers ("Corps") was not adhering to proper administrative procedure and had erroneously allowed Landowner to construct a road under the pretext of agricultural use when, rather, it was for Landowner's own private development. Tribe alleged violations of federal laws by Corps for its failure to preserve the lake. Tribe appealed the lower court's decision to dismiss the majority of its claims. On appeal, the Eighth Circuit Court of Appeals affirmed that Tribe's prior notice to Landowner, that the authorization was subject to recapture, and any subsequent efforts to enforce were subject to Corps' discretion and, thus, were essentially nonjusticiable. The court also affirmed the lower court's determination that Corps' communications regarding the exemption determinations and permit issuance were not final agency action, even though this did little to assist the Tribe with its statute of limitations defense. The court also held that the permits issued to Landowner were not "inappropriately stacked" or interrelated as Tribe claimed but were instead separate and independent projects.

M.D. Louisiana

United States v. 9.345 Acres of Land, More or Less, Situated in Iberville Parish, State of Louisiana, No. 11-00803-JWD-EWD, 2018 WL 1920169 (M.D. La. Apr. 24, 2018).

This case involved a federal eminent domain action to acquire and protect a cavernous natural resource reserve from Company. The court reviewed opposing motions in limine to exclude evidence and affirmed the Government's motion to exclude "scope of the project" evidence because no change in market value was actually shown due to the condemnation. In their separate motions, Government requested to exclude Company's "condemnation blight" evidence, or evidence showing adverse impacts of the condemnation, while Company requested to exclude Government's evidence of Company's lack of action in marketing the property and the

efficiency of conversion of the cavern's use for the Government's intended purpose. The district court held that since this taking was a federal eminent domain proceeding and was *de jure*, a taking for public interest based in law rather than on fact, evaluating the "condemnation blight" evidence was not appropriate. Likewise, the "scope of the project" evidence to show negative impact on market value was found to be inappropriate in this case, because there was no dispute or evidence showing that the market value of the property was negatively impacted. Although Government's motion was partially denied, the court provided an allowance for Company to present additional evidence in the future that the eminent domain status, and advertisement of this status, prevented them from further developing and capitalizing on the maximum market value of the property prior to the actual taking.

D. Maine

Coastal Me. Botanical Gardens v. Town of Boothbay, Maine, No. 2:17-cv-00493-JDL, 2018 WL 1915923 (D. Me. Apr. 23, 2018).

This case involved Developer's claims alleging violation of procedural due process. Developer had a development permit in place, but the permit was rescinded after objections from other residents. Intervenors, who owned neighboring property, appealed the grant of the development permit. The town's Board of Appeals ("Board") reviewed, conducted an investigation, and visited the property and development site. However, Developer alleged this to be improper ex parte communication. Developer requested that the Board members who visited the property independently recuse themselves from the subsequent review and determination process. The decision ultimately came down to those votes, and Developer's permit was rescinded because Developer's proposed plans were not found to be appropriate for the proposed site of the development, which is in a watershed overlay. An agreement and settlement for a consent decree was reached, but Intervenors objected to the decree, claiming that the decree would prevent them from continuing to fight Developer's proposed plans. After judicial review, the court granted the motion for entry of the consent decree. The court found that the consent decree was valid for various reasons, most notably the efficiency for facilitating an agreement between the parties, and noted that Intervenors were not barred by the consent decree to further pursue their objections through judicial review.

E.D. Washington

Little Butte Prop. Owners Water Ass'n v. Bradley, No. 2:17-CV-162-RMP, 2018 WL 1975682 (E.D. Wash. Apr. 26, 2018).

Landowner had grandfathered water rights but objected and restricted Association from accessing his property to facilitate access to water, despite an existing easement for that purpose. The district court granted County's motion to dismiss constitutional claims, granted Association's motion to dismiss Landowner's counterclaims, and granted Association's motion to exclude Landowner's witness testimony, but denied Landowner's motion for a preliminary injunction. The court determined that additional constitutional violation claims, civil rights claims against County and Association stemming from the other claims, were dismissed along with the court's grant of County's motion to dismiss. The court granted the motion to dismiss the injunctive relief claim because no urgency or requested relief was reflected in the pleadings. Landowner was not ultimately asking for the type of injunctive relief he requested initially. The court sanctioned Landowner by not allowing Landowner's witnesses, and the court determined that the witnesses were not reliable, since Landowner did not provide enough evidence to deem them reliable and failed to provide timely notice of their intent to provide information and their qualifications.

State

Florida

Blok Builders, LLC v. Katryniok, No. 4D16-1811, 2018 WL 1940951 (Fla. Dist. Ct. App. Apr. 25, 2018).

Landowner sued Company and Contractors for negligence that resulted in damages and injury caused to Landowner's property, specifically the collapse of Landowner's driveway, due to Company and Contractor's manipulation of the subsurface utility lines. Subcontractors appealed the lower court's decision to grant summary judgment motions brought regarding crossclaims. The lower court held that even though there was an indemnification provision within the agreement itself, the subcontract was not subject to the indemnification statute relied upon for the claim. Since it was excavation of subsurface utilities, rather than construction of an actual structure, the court held that Subcontractor's work did not constitute the type of construction covered by the statute. The court relied on the statute's

plain language to find that the contract was not covered by the indemnification statutes. Accordingly, the District Court of Appeal of Florida reversed the lower court's finding, holding instead that Subcontractor was not legally obligated to indemnify the initial contracting party, but affirmed the lower court's finding that Subcontractor was obligated to indemnify the direct Contractor, with whom it had a contractual relationship.

Kansas

NPIF2 Kan. Ave., LLC v. BH Invs., LLC, 416 P.3d 1044 (Kan. Ct. App. Apr. 27, 2018).

Landowner I appealed the lower court's decision granting Landowner II an irrevocable license to be established between the two landowners of adjacent and abutting property. Because the two parties could not establish an independent and voluntary agreement that would facilitate a mutual use, the court enforced a license allowing such use for both parties. The granting of the license was based essentially on "equitable relief" because the license was mutually beneficial to both parties to the extent that it was necessary for each "to achieve the best use of their respective property." Although the Court of Appeals of Kansas here affirmed the lower court's establishment of the license between the two properties, the court also held that no notice was provided for the imposition of an injunction that would prevent the license's revocation without the sale of one of the properties. Therefore, because such notice to the parties is required, the court reversed the lower court's granting of the injunction.

This is an unpublished opinion of the court; therefore, state court rules should be consulted before citing the case as precedent.

Kentucky

Big Sandy Co., L.P. v. EQT Gathering, LLC, 545 S.W.3d 842 (Ky. Apr. 26, 2018).

A pipeline easement agreement between Pipeline Owner and Estate Owner required that if Estate Owner planned to mine in the easement area stated in the agreement, Pipeline Owner would be required to move the pipeline, paying all costs to do so, or purchase the mineral rights at depths below the pipeline from Estate Owner. This situation occurred, but because the

specific tracts that Estate Owner planned to mine housed pipeline infrastructure that was already existing in those locations prior to the development of the pipeline easement agreement, Pipeline Owner disputed that the easement agreement applied to those specific tracts. Estate Owner requested review of appellate court's reversal of circuit court's finding that the easement agreement in place between Estate Owner and Pipeline Owner applied to the specific tracts under dispute. The Supreme Court of Kentucky essentially reversed the reversal, siding with Estate Owner due to the unambiguous nature of the contract and its lack of differentiation between existing and future pipeline installations and its clear reference to the authority held by Estate Owner to use the surface to develop minerals, even though Estate Owner only held mineral rights on the specific tracts. The Court further held that the agreement did ultimately apply to those tracts and Pipeline Owner was bound to the pipeline relocation or mineral purchase requirements of the agreement regarding those specific tracts.

Michigan

Savoy Energy LP v. Beasinger, No. 336392, 2018 WL 2166044 (Mich. Ct. App. May 10, 2018).

Servient Estate Owner ("Servient") brought this action against Dominant Estate Owner (Dominant"), alleging Dominant was overburdening the easement. Dominant owned a piece of land that was landlocked. Dominant obtained an easement against Servient from the previous landowner. The easement was for the ingress and egress from the property as well as public utilities. However, at the end of the conveyance of the land, it also made reference to oil and gas interests. Dominant decided to drill for oil and used heavy machinery that was transported on the easement. Servient claimed that Dominant unduly burdened the easement tract of land and damaged the land itself. The lower court determined that Dominant could use the easement going forward but only for emergency purposes because Dominant unduly burdened and damaged the easement tract of land. The Court of Appeals of Michigan determined that Dominant could use the easement with heavy machinery because previous owners used heavy machinery on the easement land. Additionally, the appellate court determined that Dominant did overburden and damage the easement but concluded that the lower court's determination was too extreme. The appellate court remanded the case in order for the lower court to determine a remedy that was more equitable to both parties.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

New Jersey

Larue v. Monmouth Cty. Agric. Dev. Bd., No. A–2608–16T1, 2018 WL 1790073 (N.J. Super. Ct. App. Div. Apr. 16, 2018).

Farm Owners appealed Development Board's decision that farm was not entitled to protection under the Right to Farm Act ("RTFA"). State Agricultural Development Committee ("Committee") overturned Development Board's decision, and the Superior Court of New Jersey, Appellate Division, affirmed. The court held that the original deciding body applied a stricter test than is required by New Jersey authority, which simply calls for "'a legitimate, agriculturally-based reason' for the agricultural management practice at issue." The court held that Committee's decision to overturn that finding based on the application of the correct standard was proper, and accordingly affirmed the reversal in favor of Farm Owners.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

Pennsylvania

Condemnation of Permanent & Temp. Rights of Way for Transp. of Nat. Gas in Buffalo v. Nat'l Fuel Gas Supply Corp., No. 1093 C.D. 2017, 2018 WL 2945112 (Pa. Commw. Ct. June 13, 2018).

Pipeline Operator requested an easement from Landowner for the construction of a natural gas pipeline across its land. Landowner refused, and an eminent domain case was filed. Landowner challenged the amount of compensation that was awarded for the easement by the jury. Landowner's expert testimony from land appraisers was excluded, and some of Pipeline Operator's expert testimony was allowed by the lower court. Landowners challenged the exclusion of their expert's testimony as to the value of the land and the subsequent compensation awarded by the jury. On appeal, the Commonwealth Court of Pennsylvania found that the trial court did not err by allowing the introduction of Pipeline Operator's expert testimony. In addition, the court found that the trial court appropriately excluded Landowner's expert testimony because the Pipeline

Operator's testimony took into account the land value before and after the pipeline easement.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

Texas

Tabrizi v. City of Austin, No. 08-16-00209-CV, 2018 WL 1940556 (Tex. App. Apr. 25, 2018).

Landowners appealed lower court's decision to dismiss their claims against City and Employees. City denied Landowners from developing their property because of environmental issues with the development site, preventing both issuance of building permits and approval of an application for subdivision platting. Landowners' request for an exemption from relevant requirements was denied. Landowners then brought a lawsuit claiming *ultra vires,* that City and Employees inappropriately and erroneously applied City's land use regulations to their property and exceeded the scope of their duty. The lower court found that it lacked jurisdiction to evaluate City's application of its ordinances. Landowners objected to this and requested additional review. Upon this review, the Court of Appeals of Texas affirmed the district court's decision, evaluating the statutory authority vested in the municipal officials and holding that neither City nor Employees exceeded their authority in imposing restrictions and regulations on land use. City and Employees sought immunity due to their activities, the application and enforcement of land use ordinances, their governmental functions, and their actions being within their official authority as municipal representatives. The court maintained that there was no jurisdiction to construe municipal ordinances, even though Landowners claimed there was because they were seeking no monetary relief.

SELECTED ELECTRICITY DECISIONS

Traditional Generation

Maryland

Montgomery Cty. v. GenOn Mid-Atlantic, LLC, No. 2626, Sept. Term, 2016, 2018 WL 1920116 (Md. Ct. Spec. App. Apr. 24, 2018).

Power Plant filed suit to prevent County from issuing back-taxes based on its new interpretation of a state statute authorizing a tax on "station power," or such power generated by Power Plant specifically used to power its operations. A Tax Court found in favor of Power Plant, and County filed for judicial review. The lower court upheld the ruling of the Tax Court, and County appealed. Because the statute requires that taxes be levied upon "delivery for final consumption in the County," and Power Plant could not deliver generated power to itself, the Court of Special Appeals of Maryland declined to hold that the lower court's finding was erroneous. For that reason, the court affirmed the lower court's finding in favor of Power Plant.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

New Hampshire

In re Algonquin Gas Transmission, LLC, No. 2017–0007, 2018 WL 2307061 (N.H. May 22, 2018).

Electric Company and Owner/Operator filed for review of an opinion issued by Public Utilities Commission ("PUC"), dismissing Electric Company's petition to have a proposed contract for natural gas transportation and storage in order to be used by electric generation facilities approved and for associated details surrounding that approval. The Supreme Court of New Hampshire reversed PUC's decision. To make its determination, the Court looked to the intent of the state's legislature in its recent restructuring of state law. The lower court found that allowing an Electric Company to purchase long-term gas capacity was contrary to the new statutes' requirement that generation activities should be functionally separate from transmission and distribution activities. The Supreme Court of New Hampshire disagreed, holding that the "functional separation"

requirement was more permissive than PUC had read it and that it was to be read with the understanding that the primary goal of the restructured statute was "to reduce electricity costs to consumers." For that reason, the Court reversed and remanded the issue to PUC for proceedings consistent with its opinion.

Oklahoma

In re Application of Okla. Gas & Elec. Co., 2018 OK 31, 417 P.3d 1186.

In 2014, Electricity Company sought approval from Corporation Commission on Electricity Company's application for capital expenditure to install pollution-control devices at one of its power plants. When the application was denied by Corporation Commission, Electricity Company applied again in 2016 and was approved. Citizen Advocates sought review of Corporation Commission's pre-approval of the installation of the scrubbers and the Oklahoma Supreme Court retained jurisdiction. Citizen Advocates claimed that res judicata precluded the second application and should accordingly should be invalidated. The Court disagreed, stating that Corporation Commission was exercising its legislative power, as opposed to its judicial power because it was considering the application based on future implications and making a new rule to be applied thereafter, not ruling on the legal propriety of the application, since it had already ruled against it in the first application. However, the Court did find that Corporation Commission lacked the authority to approve the application outside of the proper statute. Thus, the Court vacated the order of Corporation Commission, recommending that Electricity Company re-apply under the correct statute.

Wisconsin

Town of Holland v. Pub. Serv. Comm'n. of Wis., 2018 WI App 38, No. 2017AP1129, 2018 WL 2448579.

Town sued Public Service Commission ("Commission"), arguing against Commission's approval of the construction and operation of high voltage transmission line for electrical utilities. In its argument for judicial review, Town alleged that the Environmental Impact Statement ("EIS") conducted by Commission was insufficient. Commission argued that the construction and operation of the high voltage transmission line was necessary to allow for an adequate supply of electricity to an area near Town. Citing

Wisconsin state law, the Court of Appeals of Wisconsin ruled against Town, finding that the transmission line construction could be construed by Commission as being for the "reasonable needs of the public." Because the appellate court grants deference to Commission's prior decisions under review, the court's review of the EIS was based on the adequacy of rational basis, as the court affords weight deference to the reasonableness of Commission's adequacy determination. Ultimately, the appellate court held that Commission had conformed to the standard set out by state law in providing a rational basis for the approval order in controversy.

Renewable Generation

N.D. California

Tech. Credit Corp. v. N.J. Christian Acad., Inc., 307 F. Supp. 3d 993 (N.D. Cal. Apr. 18, 2018).

Company filed suit against Church and School for breach of contract after Company provided funding for a failed solar energy project. Church and School filed a Motion to Dismiss and, alternatively, Motions for Improper Venue due to a forum selection clause in the contract, and a Motion to Transfer. The breach of contract claim stemmed from a series of events leading to the failed solar energy project between Church and School and a third-party Energy Company. Company initiated this action to collect its alleged damages as a result of Church and School's failures to pay back the cost of the failed project. The district court found that: (1) although much of the process surrounding the creation of the contract in question took place in New Jersey, enough significant conduct related to the suit at hand took place in the Northern District of California to qualify it as a proper venue for the action; (2) the forum selection clause in the contract requiring disputes to be handled in California was valid, and thus, there was no reason to transfer the suit out of California; and (3) no other factor, including the court's familiarity with governing law, local interest in the suit, burden on the local judicial system, court congestion, parties' choice of forum, or costs of resolving a dispute which is unrelated to the particular forum outweighed the validity of the forum selection clause and provided a reason to transfer the action out of California. For those reasons, the court denied Church and School's motions to dismiss and to transfer the action to New Jersey.

SELECTED TECHNOLOGY AND BUSINESS DECISIONS

Bankruptcy

5th Cir.
In re ATP Oil & Gas Corp. v. Schlumberger Tech. Corp., 888 F.3d 122 (5th Cir. 2018).

Service Providers appealed grant of Investor's motion to dismiss Service Providers' claims. After Corporation filed for bankruptcy, Service Providers, who had fostered Corporation's operations, brought claims to enforce their existing liens and retain them as part of the bankruptcy estate, rather than allow them to be excluded as separate royalty interests conveyed to Investor, in response to Investor's attempt to exclude the royalty interests. Conveyance of these royalty interests occurred after Service Providers' liens were filed. Liens were attached to operating interest, and overriding royalty interests were conveyed to Investor. However, the Fifth Circuit Court of Appeals held that liens cannot attach to the royalty interest, since that interest was previously conveyed, even if the minerals had not yet been extracted. The court evaluated the statutory "safe-harbor provision," specifically addressing whether that provision applied to the overriding royalty interests conveyed. By evaluating the statutory language, the court determined that the safe harbor provision applied because Service Providers did not give "actual notice," or provide any evidence that they did so, of their outstanding liens at the time of purchase of the overriding royalty interests. Therefore, the liens cannot attach to the royalty interests and the lower court's decision to grant Investor's Motion to Dismiss was affirmed.

Mergers & Acquisition

D. Colorado

United States v. Pioneer Nat. Res. Co., No. 17–cv–0168–WJM–NYW, 2018 WL 1858549 (D. Colo. Apr. 18, 2018).

Agency claimed that Company failed to take proper action to remediate problems with their mining operations, resulting in the release of contaminates into nearby water bodies. This action was brought to determine whether Company is liable for such illegal activity as successor of their predecessor company. CERCLA allows claims to be made against the entity that "at the time of disposal of any hazardous substance owned or

operated any facility." Even though in an asset sale, also included in Company's history, such liabilities are not transferred to the buying party, such liability can be conveyed (1) if such liability is taken on "expressly or impliedly," (2) if the buying party is essentially a successor or a "continuation" of the selling party, (3) if the companies are merged, or (4) if the sale is an attempt to relieve seller from liabilities. The district court disagreed with Company's claims that it was not the owner or operator of the mining operation at the time of discharge. The court granted Agency's Motion for Summary Judgment, finding that the history of corporate mergers shows Company to be the successor and thus the liable party through indirect or successor liability, despite the lack of documentation showing that acceptance of liability was taken voluntarily or knowingly.

Intellectual Property – Federal

Supreme Court

Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S.Ct. 1365 (2018).

Patent Owner filed suit against Energy Company for infringement of a patent pertaining to technology used for protecting wellhead equipment utilized during hydraulic fracturing, petitioning both the Patent and Trademark Office ("PTO") for inter partes review, and filing suit in district court. The district court ruled in favor of Energy Company, while PTO found in favor of Patent Owner. Patent Owner appealed, challenging the constitutionality of inter partes review for violating its right to a jury trial. The Federal Circuit summarily affirmed the ruling of the district court. On appeal, the Supreme Court, addressing only the constitutionality of inter partes review, held that because inter partes review fell within the "public-rights doctrine," PTO has authorization to conduct such review without violating Article III of the constitution.

E.D. Virginia

Cooper v. Greenly Grp. for Solar Techs., Ltd., No. 1:17–cv–1313–LMB–MSN, 2018 WL 1875291 (E.D. Va. Apr. 18, 2018).

Individual alleged that Third Party fraudulently transferred the patent rights in question to Energy Company after Individual filed an arbitration demand in order to resolve a dispute with Third Party. The arbitrator found against

Third Party for a large monetary amount, and Third Party fled the country to avoid collection efforts by Individual. The district court adopted the findings of a Magistrate Judge and entered a default judgment against Energy Company.

Intellectual Property – State

Pennsylvania

Weiss v. Fritch, Inc., No. 2332 EDA 2017. 2018 WL 1940109 (Pa. Super. Ct. Apr. 25, 2018).

Landowner sued Oil Provider and Environmental Service for negligence because of damage done to Landowner's oil tank and home. Landowner entered into a contract with Oil Provider to receive oil in his 275-gallon aboveground oil storage tank in the basement of his home. When the tank was installed, Oil Provider gave Landowner a pamphlet promoting Environmental Service's "TankSure Program," which would provide corrosion protection and annual tests for tank corrosion as well as warranty for a replacement tank. Landowner opted to enroll in the program, and oil deliveries and program activities began. However, in December 2014, Oil Provider refilled Landowner's tank, causing it to rupture and spill approximately 100 gallons of oil in the basement. Oil Provider cleaned up the spill, removed the tank, and installed a new tank but did not use proper procedures and caused further damage to Landowner's house. The trial court dismissed the negligence claims on the grounds that Landowner had not proven that the TankSure Program falsely advertised any benefits or qualities it did not possess. On appeal, the Pennsylvania Superior Court found that Landowner failed on a claim of breach of contract, which it then attempted to rebrand as a claim of false advertising, which, likewise, failed.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

Other Issues – Federal

5th Cir.

Entergy Texas, Inc. v. Nelson, 889 F.3d 205 (5th Cir. 2018).

Plaintiff Operating Company filed suit against Public Utility Commission of Texas ("Utility Commission") on the grounds that Utility Commission's previous order concerning the allocation of bandwidth payments conflicted with a prior Federal Energy Regulatory Commission ("FERC") order. FERC regulates energy production and sale that takes place across state lines, and Operating Company performs as a public utility in multiple states. Thus, Operating Company falls under FERC's jurisdiction. To ensure that Operating Company's different state-based subsidiaries maintained approximately equal costs of production, FERC maintained a system of bandwidth payments that ensured that, on a yearly basis, "...if necessary, 'payments [are] made by the low cost Operating Company(ies) to the high cost Operating Company(ies) such that, after reflecting the payments and receipts, no Operating Company [has] production costs more than 11 percent above the Entergy System average or more than 11 percent below the Entergy System average.'" However, the issue presents itself at state borders because state regulators determine what effect bandwidth payments have on retail rates for customers. In 2007, this became an issue for Texas and Louisiana regulators as they had, in 2006, a shared subsidiary under Operating Company. The respective regulators of the two states had differing opinions concerning the proper split of their $120.1 million bandwidth payment, resulting in Operating Company owing more to the two state legislatures than it had received the previous year. Naturally, Operating Company argued this to be unfair and took its complaint to FERC which dismissed the matter multiple times until Operating Company filed suit in district court where the court found in Operating Company's favor, enjoining enforcement of Utility Commission's order for payment. On appeal, the Fifth Circuit Court of Appeals held that FERC was correct in dismissing the matter and that Utility Commission's order was not preempted by FERC's order.

9th Cir.

Cal. Dep't of Toxic Substances Control v. Westside Delivery, LLC, 888 F.3d 1085 (9th Cir. 2018).

After conveyance of property through a tax sale, the court considered whether Purchaser was responsible for CERCLA-imposed penalties for activity that occurred during Previous Owner's operation. A site remediation plan was developed but was not carried out prior to Previous Owner's failure to pay taxes and the subsequent tax foreclosure sale. After the tax sale, Department implemented the plan and took action to clean up the site, but sought reimbursement of the associated costs from Purchaser, who then claimed that its interest was as a third-party to the contamination, without a "contractual relationship" with the party initially responsible for the contamination and thus was not obligated to take on the costs of remediation. Generally, this was a defense offered by CERCLA that allows a party to avoid liability as an uninterested third party to a violation. The lower court agreed with Purchaser, and Department appealed. On appeal, the Ninth Circuit Court of Appeals reversed the lower court's decision, holding that Purchaser was responsible and still liable for the costs, and the relationship between the parties could not fall under the "third party defense." This was because the tax sale transaction did constitute a contractual relationship between the parties, and Purchaser was not an "innocent" party or purchaser with no knowledge of the property's history of contamination, and all acts causing the contamination occurred on the property itself and were caused by the Previous Owner. Therefore, the court reversed and remanded the lower court's decision.

N.D. West Virginia

Corder v. Antero Res. Corp., No. 1:18CV30, 2018 WL 2925128 (N.D.W. Va. June 11, 2018).

Oil and gas royalty owners ("Royalty Owners") brought suit against Producer for breach of contract and improper reduction of their payments. Royalty Owners alleged that Producer had made improper reductions of their royalty payments, overcharged them for deductions, and failed to pay them for the volume of natural gas they had extracted and sold. Producer filed a motion to dismiss, claiming the royalty agreements between the parties allowed them to make necessary deductions of payments. The district court dismissed these claims on the grounds that clauses in contract

allow for it. However, the court dismissed all claims but one for breach of contract. The court found that in the case of a single breach of contract claim, there was an express prohibition of reduction of costs in order to market the oil. The court denied the motion to dismiss the claim that Producer improperly reduced the cost it at which it was selling oil in order to market it. Royalty Owners' suit was kept alive by this claim and the court allowed it to proceed.

Other Issues – State

Texas

Bosque Disposal Sys., LLC v. Parker Cty. Appraisal Dist., No. 17–0146, 2018 WL 2372810 (Tex. May 25, 2018).

Taxpayers alleged that they were subject to illegal double taxation by County after the land they owned was taxed as well as the saltwater disposal wells that laid beneath the land. The trial court found that this did amount to illegal taxation. However, upon appeal, the appellate court found for County. Upon review, the Supreme Court of Texas held that under the Texas Tax Code, the separate taxation by County of the property's surface and the property's subsurface saltwater disposal wells was completely proper. The court noted that although the land and improvements are typically taxed as one, per the Tax Code, County is permitted to separate them and tax individually. Additionally, the court rejected Taxpayer's claim that the saltwater disposal wells were not taxable because they were intangible personal property in addition to a claim that County was taxing Taxpayers business interest in the disposal wells.

Eagle Oil & Gas Co. v. Shale Expl., LLC, No. 01–15–00888–CV, 2018 WL 1870081 (Tex. App. Apr. 19, 2018).

Oil and Gas Company ("O&G Company") appealed a jury award to Exploration Company regarding "misappropriation of trade secrets." O&G Company claimed that Exploration Company's claim was subject to claim preclusion, and thus barred, and lacked sufficient evidence to show O&G Company's liability regarding the alleged misappropriation. The Court of Appeals of Texas affirmed the lower court's finding that Exploration Company's claim was not barred by claim preclusion because no privity existed between Exploration Company and other related companies that were involved in earlier, similar actions. The court also found that the

"economic loss rule" did not bar the claim because the claim is not required to be a contract claim but could be a separate misappropriation claim. Additionally, the court held that adequate evidence was presented to show that the subject of the dispute was in fact a trade secret and that O&G Company did actually misuse such information, due in part to the presence of confidentiality requirements and the history of communication provided by O&G Company. The court did, however, reverse the lower court's support of the jury's finding that such misappropriation was shown to be a result of malice, supported by adequate evidence. Therefore, the court also held that Exploration Company could not receive exemplary damages, due to the lack of malice.

Lona Hills Ranch, LLC v. Creative Oil & Gas Operating, LLC, No. 03-17-00743-CV, 2018 WL 1868054 (Tex. App. Apr. 19, 2018).

Lessee and Operator sued Lessor for a breach of contract claim as counter to Lessor's trespass claim regarding an oil and gas lease. Lessor appealed the lower court's interlocutory decision to deny Lessor's motion to dismiss Operator's and Lessee's counterclaims after Lessor's initial trespass claims. The Court of Appeals of Texas affirmed in part the lower court's denial of Operator's motion to dismiss and denied in part, dismissing all of Operator's breach of contract counterclaims and a counterclaim for breach of contract brought by Lessee pertaining to the lease's validity. The court held that the breach of contract counterclaim was not supported by adequate evidence "regarding Lessor's alleged communications with third parties," but also that Lessor successfully showed that the elements of the counterclaims were "predicated factually on lessor's exercise of right of free speech" and on "lessor's right to petition." This was based on Operator's and Lessee's reference to multiple statements and filing of a court action by Lessor. Further, no evidence was provided that such statements were restricted by the lease contract.

Ramsland v. WFW Family, LP, No. 05-17-00326, 2018 WL 1790080 (Tex. App. Apr. 16, 2018).

After members of both parties inherited various royalty and working interests on a particular lease, Family LP filed suit against Energy Company, alleging improper payments made by the operator of the wells to Energy Company. Energy Company filed countersuits alleging breach of contract and failure to make payments on working interest revenues received. Family LP filed for summary judgment on the counterclaims,

and—after an arduous procedural battle and the resolution of a related suit—eventually nonsuited its original claims against Energy Company. The trial court ultimately granted Family LP's motion for summary judgment on Energy Company's counterclaims, and Energy Company filed this appeal. The Texas Court of Appeals held that: (1) because Texas law does not rescue counterclaims in suits for declaratory judgment if barred, as a matter of law, by limitations, Energy Company's motion for summary judgment on that basis was denied; (2) the record reflected no evidence of a breach of contract within four years of the filing of the suit at hand, nor any evidence of a violation of the Joint Operating Agreement in the same time frame; and (3) Energy Company could not receive equitable relief in the form of the working interest revenue because Energy Company did no work "for" Family LP in the relevant time period. For those reasons the court affirmed the trial court's judgment against Energy Company on all issues before it and denied Energy Company recovery of Attorney's Fees.

SELECTED ENVIRONMENTAL DECISIONS

Federal

D.C. Cir.

Nat'l. Envtl. Dev. Ass'n's Clean Air Project v. Envtl. Prot. Agency, 891 F.3d 1041 (D.C. Cir. 2018).

Environmental Advocates sued Environmental Protection Agency ("EPA"), seeking review of newly modified regulations of the Clean Air Act ("Act"). The regulations in controversy related to requirements that operators responsible for significant sources of pollution acquire a fixed-term permit. Environmental Advocates argued that EPA's amendments established "inconsistent permit criteria" depending on the geographical location of the operator's operation. According to Environmental Advocates, the regulatory amendments were inconsistent with 42 U.S.C. § 7601(a), which require EPA to implement the Act uniformly nationwide. The Court of Appeals for the District of Columbia held in favor of EPA regarding all arguments, determining that Environmental Advocate's focus on the amendments surviving step one of Chevron was incorrect. The court noted that the federal statute in question solely addressed delegation-created inconsistencies instead of judicially created inconsistencies as well. In accordance with EPA's position on the issue, the court also held that the Act allowed for inter-circuit non-acquiescence, as inter-circuit conflicts are inevitable regarding inconsistent judicial outcomes. Because of this ruling, federal courts' ruling against EPA on local or regional issues does not consequently apply automatically across the nation.

N.D. Alabama

Day, LLC v. Plantation Pipe Line Co., No. 2:16–cv–00429–LSC, 2018 WL 2572750 (N.D. Ala. June 4, 2018).

Landowners brought suit against Pipeline Owner after a pipeline spill caused damage to Landowners' property. Landowners brought claims of trespass, nuisance, wantonness, and negligence, as well as violations of the Clean Water Act ("CWA"), and the Resource Conservation and Recovery Act ("RCRA"). Pipeline Owner moved for partial summary judgment on the plaintiffs' environmental claims and argued that Landowners could not pursue a claim under the CWA because the spill occurred in 2014, was

imediately cleaned up, and the CWA only allows a citizen suit for ongoing violations. The district court agreed with Pipeline Owners and granted their motion for summary judgment. It found that the CWA claim could not stand because Pipeline Owners contained the spill and worked for years to remediate the effects of the spill. Additionally, the court found Landowners were unable to show that any remaining gasoline vapors presented an imminent risk to human health in violation of the RCRA, and as a result, it also granted Pipeline Owners' motion for summary judgment on Landowner's RCRA claim.

E.D. California

AquAlliance v. U.S. Bureau of Reclamation, No. 1:15–CV–754–LJO–BAM, 2018 WL 2734923 (E.D. Cal. June 7, 2018).

Water Conservation Agencies ("Agencies") brought suit against U.S. Bureau of Reclamation and other agencies ("Bureau") challenging federal government's 10-year water transfer program that moved water from sellers upstream of the Sacramento/San Joaquin Delta to buyers downstream of the delta. Agencies claimed that Bureau's approval of different reports violated the National Environmental Policy Act ("NEPA") and the U.S. Endangered Species Act ("Species Act"). At trial, the district court found that all the reports challenged contained some unlawful parts within them, and the court ordered the parties to meet and come up with a proposed schedule for future proceedings. The parties could agree on whether the court should vacate he Bureau's findings or remand without vacatur. Upon review of the facts, the court determined that, given the assertions of the parties, remand without vacatur was not justified. Because the court found that the facts suggested no environmental or other consequences would result from a vacatur of the reports, it ordered a vacatur of the reports of the Bureau.

N.D. California

Oakland Bulk & Oversized Terminal, LLC v. City of Oakland, No. 16-cv-07014-VC, 2018 WL 2210680 (N.D. Cal. May 15, 2018).

The City of Oakland ("City") entered into an agreement with Developer to build and operate a bulk cargo shipping terminal. Terms of the agreement stipulated that any regulations adopted by City after the agreement was entered into would not apply to the subject of the agreement: the shipping terminal. However, an exception to this stipulation existed. If City

determined that failure to apply a new regulation would pose a substantial danger to the health or safety to the people of the city, then the regulation could apply to the terminal. After the agreement was signed, concerns throughout the city grew regarding the potential transport of coal through the terminal. In response, the City Council adopted new regulations banning coal operations at bulk material facilities, and the new regulation specifically noted that it applied to the shipping terminal in question. Developer brought suit against City claiming that City lacked substantial evidence to conclude that the potential coal operations at the terminal would pose a substantial health or safety risk to the people of the city, and thus it was in breach of the agreement. The district court found that while the substantial evidence standard created by the agreement was highly deferential to lawmakers, it found that City erred in allowing the new regulation to apply to the terminal because there was insufficient evidence before the council made its decision showing the potential coal operations would pose a substantial health or safety risk. Thus, the court found that the regulation adopted by City was a breach of the agreement between City and Developer, and accordingly, City could not restrict Developers coal operations.

D. Colorado

WildEarth Guardians v. U.S. Bureau of Land Mgmt., No. 17–cv–3141–WJM–STV, 2018 WL 1905145 (D. Colo. Apr. 23, 2018).

Environmental Organization brought suit against Government Agency, alleging that Government Agency made an illegal decision not to perform a certain type of analysis under the Clean Air Act ("CAA") in auctioning particular oil and gas leases. Government Agency found no need to perform the analysis because (1) its action of leasing would not "directly" cause any emissions which must fit within the particular standard; and (2) it argued that future emissions by leaseholders were not reasonably foreseeable. The district court determined that future emissions would be reasonably foreseeable if their location was known and they could be quantified and described and documented by Government Agency using the information in its possession. The court then laid out what it thought was the best argument in favor of Environmental Organization but disregarded it because it was not the one Environmental Organization pursued. The court found that the burden was on Environmental Organization to prove that Government Agency "arbitrarily or capriciously" made the decision that the information in its possession at the time was insufficient to make future

emissions reasonably foreseeable. Because its arguments did not overcome the presumption of validity in Government Agency's favor, the court affirmed Government Agency's determination and terminated the case.

D. District of Columbia

Clean Water Action v. Pruitt, No. 17–0817, 2018 WL 1865919 (D.D.C. Apr. 18, 2018).

Environmental groups ("Groups") brought suit against Environmental Protection Agency ("EPA") challenging the agency's postponement of a rule that limited how much toxic metal could be discharged along with the waste that water power plants create. Groups alleged that EPA failed to make the appropriate findings in order to have justification to stay the new rule. At trial, EPA moved to dismiss the claims, arguing that Groups' claims were moot because the stay on the rule was already withdrawn. Instead, EPA issued an amendment to the rule and pushed back compliance dates. The trial court granted EPA's motion to dismiss. Groups then motioned the court to allow them to amend their complaint to include claims challenging the amendment to the rule rather than the stay of the rule, but the court also denied this request.

S.D. Florida

Cotromano v. United Techs. Corp., No. 10-80840-Civ-Marra, 2018 WL 2047468 (S.D. Fla. May 2, 2018).

Private homeowners ("Homeowners") brought suit against a rocket and aerospace testing and manufacturing plant ("Plant") alleging contamination of the air, water, and soil of their properties. Homeowners made claims of contamination or risk of future contamination, loss of use and enjoyment of property, as well as diminution in value of property. Homeowners filed a putative class action suit alleging the class suffered over $1 billion in damages. Landowners motioned to certify its class to the trial court. The trial court denied Homeowners' bid to certify the class, finding that the proposed class area in the residential community was over-inclusive. The trial court relied on the findings of Homeowners' experts, all of whom failed to connect the boundaries of the proposed class to the area at risk of contamination. Additionally, the court found that Homeowners' claims were too individualized to justify a class action. Accordingly, the motion to

certify the class was denied, and the court ordered the case to proceed on behalf of individually named Homeowners.

N.D. Illinois

LCCS Grp. v. Lenz Oil Serv. Peoria, Inc., No. 16 C 5827, 2018 WL 1961133 (N.D. Ill. Apr. 26, 2018).

Facility Owner filed suit against Operator under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), alleging a release of hazardous substances from Facility Owner's facility. Facility Owner's records showed that Operator's predecessor disposed of approximately 133,200 gallons of waste from the facility prior to Operator's formation as an entity. Operator filed for summary judgment, arguing that it was not the same entity as its predecessor and had no relation to the activities causing the legal matter at hand, and thus, it could not be held responsible under CERCLA. However, the court agreed with Facility Owner that there was sufficient evidence to raise a question as to whether Operator was the legal successor in the matter of the disposal of the waste and denied Operator's motion for summary judgment.

E.D. North Carolina

Save Our Sound OBX, Inc. v. N.C. Dep't of Transp., No. 2:17–CV–4–FL, 2018 WL 2671207, (E.D.N.C. June 4, 2018).

Non-profit opposition group ("Opposition") brought suit against the North Carolina Department of Transportation and the Federal Highway Administration ("Agencies") challenging their approval of a 2.8-mile-long "jug-handle bridge" ("Bridge") over the Pamlico Sound. Opposition claimed Agencies approved the Bridge without fully considering environmental consequences under National Environmental Protection Act ("NEPA"), the feasible alternatives under the Department of Transportation Act ("DTA"), or impacts of the Bridge on historically significant property under the National Historic Preservation Act ("NHPA"). Opposition argued that Agencies' approval of the Bridge was predetermined as part of a settlement agreement in which Agencies agreed to sign off on the Bridge in exchange for conservation groups dropping a lawsuit challenging the construction of another bridge that is part of the reconstruction of the entire highway. The district court found for Agencies, finding that Agencies

complied with the NEPA and other federal laws when approving a bridge in the Outer Banks. The court rejected Opposition's claims of a settlement agreement predetermining Agencies' approval of the bridge.

S.D. West Virginia

Ohio Valley Envtl. Coal. v. Fola Coal Co., LLC, No. 2:17-3013, 2018 WL 1833215 (S.D.W. Va. Apr. 17, 2018).

Environmental groups ("Groups") brought suit against Coal Company for violations of the Clean Water Act ("CWA") and the Surface Mining Control and Reclamation Act (collectively "Acts"). Groups alleged that Coal Company improperly discharged pollutants from its mines into nearby waters. Coal Company moved to have the claims dismissed on the grounds that Groups' claims were barred because res judicata precluded them. Coal Company asserted that two previous suits brought against them challenging their discharges into nearby streams were the same allegations as the claims brought by Groups and were thus barred by res judicata. The claims in the previous suits against Coal Company challenged the discharge of selenium into nearby water. In the present case, Groups specifically challenged the discharge of ionic chemicals. Because of this, the court disagreed with Coal Company and instead found that the causes of action brought by Groups were different from the previous suits and had different transactional nuclei. As such, res judicata did not bar Groups' claims.

State

California

Save Adelaida v. Cty. of San Luis Obispo, 2d Civ. No. B279285, 2018 WL 2439874 (Cal. Ct. App. June 20, 2018).

Olive Orchard Owner ("Owner") applied to the County of San Luis Obispo ("County") for a minor use permit to hold events on its property. Owner planned to construct a 300-square-foot agricultural building for olive oil and wine processing. After reviewing the permit request, County issued a mitigated negative declaration ("MND") granting the permit. Neighbors argued an MND was not sufficient and that environmental impact report ("EIR") was required. The trial court found that an EIR was in fact necessary in order to analyze the impact of the project on traffic, noise, water use, etc. However, the court also determined that an EIR was not

necessary to analyze the project's use of wastewater or compliance with the county's land use ordinance. Both parties appealed. On appeal the California Court of Appeals reversed the lower court decision and held that an EIR was required to analyze wastewater after finding discrepancies in the MND and statements by Owner's staff regarding the waste water.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.

World Bus. Acad. v. Cal. State Lands Comm'n, No. B284300, 2018 WL 2948667 (Cal. Ct. App. June 13, 2018).

Environmentalist challenged the decision of state lands commission ("Commission") to extend a lease to Power Company for state owned submerged and tidal lands of the Pacific Ocean. The lease was used for the placement of water intake and discharge structures used in Power Company's nuclear plant cooling systems. Prior to approval of the lease extension, Commission did not prepare an environmental impact report, as required by the California Environmental Quality Act ("Act"), as it considered the extension to be an exemption to the Act's requirement as an "existing facilities" categorial exemption. Environmentalist claimed that the exception was not applicable in this instance, and if it by chance was, it was subject to the "unusual circumstances" exception to the exception. At trial, the court rejected Environmentalist's claims and found that Commission's extension of the lease was proper. Environmentalist contended that the exception, with respect to power companies, only applied to structures that transmitted power, not to those that generated or provided power. On appeal, the Court of Appeal of California disagreed with Environmentalist and found that the exception had been properly applied. The court also addressed the alleged exception to the exception. However, the court again agreed with the lower court's finding that Commission properly examined whether the unusual circumstances exception applied. The court analyzed various factors used to determine whether the lease extension would have a significant impact on the environment or the possibility of a significant impact. After reviewing Commission's analysis of the lease extension, the court found that it was proper. Therefore, the court affirmed the trial court's ruling that the lease extension did not require an environmental impact report as normally required by the Act.

Pennsylvania

Gorsline v. Bd. of Supervisors of Fairfield, No. 67 MAP 2016, 2018 WL 2448803 (Pa. June 1, 2018).

Company appealed after the lower court reversed Board's denial of Company's development of natural gas wells in a district zoned "Residential-Agricultural." The ordinance at issue held that when a use is not specifically permitted or denied, a use is approved by the board only if "it is similar to and compatible with the other uses permitted in the zone" and "is in no way in conflict with the general purposes" of the ordinance. The lower court held that drilling operations are "similar to" the Residential-Agricultural purposes in the ordinance. On appeal, the Pennsylvania Supreme Court held that oil and gas drilling operations are not "similar to" the uses permitted in the ordinance. The court explained that Board was free to make amendments to the ordinance in order to allow for those types of activities, but the language of the statute, as written, did not permit those types of activities.

Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd., No. 656 C.D. 20172018 WL 2089812 (Pa. Commw. Ct. May 7, 2018).

Company owned Landfill, and in 2014, Company submitted an application, which was later approved, with Zoning Board to modify its existing permit and expand its usage of the land for waste management purposes. County Advocate objected and appealed to Zoning Board, alleging that the landfill constituted a structure under the City Zoning Ordinance, and therefore, the proposed new height of the landfill would exceed a relevant local ordinance's height restrictions. County Advocate was offered an opportunity to present testimony and evidence of its case at multiple board hearings thereafter, despite objection from Company. After multiple hearings filled with many testimonials, Zoning Board determined that County Advocate lacked standing to appeal Zoning Board's decision and affirmed its original decision to approve the application. Zoning Board reasoned that County Advocate was not a landowner abutting the landfill, and thus, lacked a pecuniary interest in the matter. County Advocate appealed to the trial court, to which Keystone responded with a motion to dismiss. The trial court heard the matter anyway and determined that Zoning Board was correct in its determination that County Advocate failed to demonstrate a substantial interest in the landfill expansion. On appeal, the Commonwealth Court of Pennsylvania determined that County

Advocate's group of homeowners did have a substantial interest in the matter and that County Advocate's position as namesake of the group of homeowners did not forego that interest.

Washington

State v. Montlake LLC, No. 77359–3–I, 2018 WL 2041518 (Wash. Ct. App. Apr. 30, 2018).

State Department of Transportation ("DOT") was instructed by legislature to build several "mega-Projects" within the state. One of the projects included the replacement of a floating bridge across Lake Washington. In order to complete this project, DOT needed to condemn three lots located in a commercial district near the Lake. DOT published an Environmental Impact Statement ("EIS") for the project and then brought suit against Landowners of the three lots to condemn the properties. After a hearing, the trial court granted DOT's public use and necessity claim for condemnation, as well as two related orders addressing environmental and administration issues. Landowners and Lessees appealed all three orders. On appeal the Washington Court of Appeals found that the evidence substantially supported the trial court's finding that DOT's condemnation decision was not arbitrary and capricious and that substantial evidence supported the findings that condemnation of the properties was necessary to complete the project. Additionally, the court rejected Landowners' argument that the Secretary of DOT improperly redelegated his condemnation authority to Program Administrator, citing a lack of evidence to support such allegations.

This is an unpublished opinion of the court; therefore, state or federal court rules should be consulted before citing the case as precedent.