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Recent Case Decisions

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RECENT CASE DECISIONS

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All case citations are as of 3-12-2019. 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 5-31-2019. 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

10th Circuit
Dine Citizens Against Ruining Our Env't v. Bernhardt, 923 F.3d 831 (10th Cir. 2019).

Environmental Groups brought suit against the Bureau of Land Management alleging violations of the National Historic Preservation Act (NHPA) and the national Environmental Policy Act (NEPA) for granting applications for permits to drill hydraulically fracked wells on public lands. On a de novo review, the court ruled that Environmental Groups had standing despite group members not identifying specific visits to each well at issue since their environmental harms were caused by the challenged permits rather than the actual wells. Further, the court determined that the environmental assessments (EAs) prepared by BLM in connection with the applications for permits did not arbitrarily define area of potential effects in violation of the NHPA and nothing required them to consider indirect effects. As such, Environmental Groups failed to carry their burden to show that BLM acted arbitrarily or capriciously in conducting their EAs in connection with the permits to drill hydraulically fracked wells.

N.D. California
California v. Bureau of Land Management, Case No. 18-cv-00521-HSG, 2019 WL 1455335 (N.D. Cal. April 2, 2019).

State and Citizen Group sued the Bureau of Land Management (BLM), the Secretary of the Interior, and the Assistant Secretary for Land and Minerals Management for rescinding a litigated 2015 Rule concerning hydraulic fracturing in public and tribal lands. The present dispute concerned State and Citizen Group trying to make BLM include nine additional documents to complete the administrative record. The court held that documents 4, 7, and 9 were not admissible, because they were just calendar entries with no substantive value, and which were not considered by any policy makers when forming the decision to respecting the 2015 Rule. Document 8 was a briefing memo for the Secretary of the Interior, which he considered as part of the decision to rescind the 2015 Rule. The court thus held that document 8 had to be added to the administrative record. The court held that documents 3, 5, and 6, relating to the 10th Circuit litigation of the Rule, were not admissible, because State and Citizen Group were unable to show

"clear evidence" that would overcome the presumption of propriety on the part of BLM in its selection of which litigation documents contained relevant information for the new litigation. Documents 1 and 2, Congressional testimony about the 2015 Rule, suffered from the same problem, no "clear evidence" to override deference given to BLM in its document selection process. The court held against her including documents 1 and 2. The court thus granted the motion in regards to document 8, but denied the motion in regards to the other eight documents.

D. Colorado

Citizens for a Healthy Cmty. v. U.S. Bureau of Land Mgmt., No. 1:17-cv-02519-LTB-GPG, 2019 WL 1382785 (D. Colo. March 27, 2019).

Organization sued the Bureau of Land Management ("BLM") and other agencies (collectively "Agencies") for judicial review of approvals by the Agencies of certain development plans, natural gas wells, well pads, and permits to drill. Organization brought suit under the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA"). Organization claimed that the Agencies acted in an arbitrary and capricious manner and that they did not consider the foreseeable indirect effects resulting from the combustion of oil and gas. The court found that the Agencies had violated NEPA. The court explained that the Agencies did not take a close enough look at the either the impacts of the combustion or at the cumulative impacts on mule deer and elk.

E.D. Michigan

Nat'l Wildlife Fed'n v. Sec'y of the Dep't of Transp. et al., No. 17-cv-10031, 2019 WL 1426310 (E.D. Mich. Mar. 29, 2019).

The National Wildlife Federation argues that the interpretation of the Oil Pollution Act of 1990, which amends the Clean Water Act ("CWA"), is arbitrary and capricious. The court found that to comply with the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), PHMSA must explain "with specificity" their reasoning in approving the response plans, while considering the impacts the environmental plan may have on any endangered species or their habitats. While CWA requires owners and operators of oil facilities to prepare a response plan that meets certain requirements into navigable waters, PHMSA decides whether to approve plans for onshore facilities. NWF challenged PHMSA's approval because it failed to satisfy CWA, and PHMSA failed to undertake an environmental analysis. Since the agency failed to explain its conclusions adequately,

PHMSA's approvals were "arbitrary and capricious." PHMSA arrived at its decision using a checklist questionnaire; however, the yes-or-no answers were unsatisfactory in light of the questions asked. The court rejected PHMSA's argument that it has no discretion to approve response plans that meet CWA requirements. Since PHMSA must determine whether the plant has met CWA requirements, it logically requires the agency to exercise "considerable environmental judgment." This means that PHMSA does in fact have discretion.

W.D. Pennsylvania
Westmoreland Cty v. CNX Gas Co., No. 2:16-CV-422, 2019 WL 1427155 (W.D. Pa. March 29, 2019).

County brought suit against Operator for breach of contract and conversion. County claimed that Operator breached the leases by wrongfully deducting certain post-production costs from landowner royalties and committed conversion of the royalty payments in the same manner. Because County could not prove detrimental reliance on Operator's revenue forecasts, the court denied their motion for partial summary judgment. Further, the court explained that a claim of conversion could not stand on the same grounds as a breach of contract in this instance. The court further partially denied Operator's motion for summary judgment because there were multiple disputes as to material facts.

Upstream – State

Pennsylvania
EQT Prod. Co. v. Borough of Jefferson Hills, No. 4 WAP 2018, 2019 WL 2313377 (Pa. May 31, 2019).

Natural Gas Producer brought suit against City Council for denying a permit to operate as a conditional use facility. When denying the permit, the Council stated that the Producer had not met its burden of proof for a conditional use application, the burden never shifted to the objectors, and that the facility would not promote the health, quality of life, and property of the residents. Further, the Council also relied heavily upon testimony of objectors at a town hall meeting that came from residents of another municipality regarding the impact of such a facility operated by the same company on their health, quality of life, and property. On an abuse of discretion and plain error standard, the Court held that evidentiary admissibility of residents of another municipality regarding the effects of a

particular land use, that was significantly similar to the proposed land use, was both relevant and probative as to whether the proposed facility would have an adverse effect on the township.

Midstream – Federal

10th Circuit
Naylor Farms, Inc. v. Chaparral Energy, LLC, 923 F.3d 779 (10th Cir. 2019).

Royalty Interest Owners brought suit against Energy Corporation alleging that Energy Corporation systematically underpaid Owners by improperly deducting from their royalty payments certain gas-treatment costs that Energy Corporation should have shouldered under Oklahoma law. The court determined that under Oklahoma law, lessees are subject to an implied duty of marketability that requires them to provide a marketable product to the market and are generally precluded from passing costs incurred in making a product marketable to royalty owners. Specifically, to make gas marketable, it must undergo processes such as gathering, compressing, dehydrating, transporting, and producing and the cost of which is borne by the lessees. However, the question of whether gas produced from wells was a marketable product that was not subject to the implied duty of marketability was subject to class-wide proof to satisfy the commonality requirements to be a class. Since a jury could have determined whether the gas was marketable without individually assessing quality of the gas, expert testimony was sufficient to determine that gas produced at the wellhead needed at least one service each and therefore not yet marketable. As such, the court was justified in affirming the district court's granting of class certification.

Traditional Generation – State

New Mexico
Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n, No. S-1-SC-36115, 2019 WL 2137168 (N.M. May 16, 2019).

Utility Company sought review of a decision by the New Mexico Public Regulation Commission granting some, but not all, an increases in retail electric rats sought by Utility Company. The court ruled that by denying Utility Company any future recovery for its nuclear decommissioning costs related to Palo Verde capacity, Commission denied Utility Company due

process of law without providing Utility Company notice and an opportunity to be heard on the matter. However, the court ruled that the rest of the challenged decisions were lawfully decided and reasonable since Commission utilized the established prudence standard for costs of facilities that a utility could include in its base rate. Further, Commission's decision that Utility Company's decision to repurchase a portion of generators' capacity and renew leases on the remaining capacity was imprudent was based on substantial evidence. Further, Commission's wide discretion allowed for their decision to limit Utility Company's recovery for the amount it paid to purchase capacity and recover on five renewed leases.

SELECTED WATER DECISIONS

Federal

Federal Claims
Whiteland Holdings, L.P. v. United States, No. 18-1081L, 2019 WL 2158874 (Fed. Cl. May 17, 2019).

Holding Companies moved for reconsideration of the trial court's dismissal for lack of subject matter jurisdiction and relief from that order against United States. Originally, the Companies alleged that the government's operations and disposal methods at a Mineral Superfund Site resulted in environmental contamination, which effected a taking without just compensation. On appeal, they argue that the court applied the wrong set of legal standards that apply to an environmental takings action. However, the court found that the Companies had not alleged an intervening change in law since the order was effected, did not rely on any new evidence, but instead merely tried to reargue their initial position. As such, the court held their motion for reconsideration meritless. Further, there was no manifest injustice because the court did not err in concluding the Companies claim accrued no later than 2011. As such, there was no mistake in the initial suit that would entitle them to reconsideration or relief from the order and the court, therefore, denied their motions.

D. Arizona
Ak-Chin Indian Community v. Central Arizona Water Conservation District, No. CV-17-00918-PHX-DGC, 2019 WL 1356310 (D. Arizona March 26, 2019).

The Ak Chin Indian Community ("Community") is a federally recognized Indian tribe. The Central Arizona Water Conservation District ("CAWCD") delivers water to Community through the Central Arizona Project ("CAP"). The Ak Chin Water Rights Act pf 1984 ("1984 Act") addresses water Community is entitled to receive. The 1984 Act provides that Community receives additional water or reduces water supplied under certain conditions. At issue is whether the additional water supply allocated to Community is allowed if there is another entity that has an allocation or contractual right to water but does not use the amount in the given year. Community argues that the unused water is "available" for other Indian purposes to fill the additional water supply to Community. CAWCD argues that the additional water can only be received if (1) the Secretary of the

Interior allocates water to the use, and (2) the user enters into a contract with the Secretary of the Interior for the delivery of water, thus Community has received their right to the water by satisfying both steps. Because Community has not entered into a contract with the provision applying to the additional water and all the water is already contracted for or reserved, there is no more water "available." The court found for Community because of the additional water supplied over the years supported the position that additional water may be supplied despite the Community not having a contract and other entities having a contractual right to the water.

S.D. California

California River Watch v. City of Escondido, 2019 WL 1429236 (S.D. Cal. Mar. 29, 2019).

Nonprofit brought citizen's suit against City under the Clean Water Act. Nonprofit alleges City violated its CWA National Pollutant Discharge Elimination System Permit through collection system discharges caused by underground exfiltration and collection system surface discharges caused by sanitary sewer overflows. City moved to dismiss, claiming Nonprofit's 60-day notice was insufficient and the complaint failed to state a claim upon which relief can be granted. The 60-day notice of intent to file suit must contain several provisions: (1) specific standard alleged to have been violated; (2) activity constituting alleged violation; (3) persons responsible for violation; (4) location of violation; (5) dates of violation; and (6) full name and address of person giving notice. Court found Nonprofit's complaint sufficiently addressed these provisions. Regarding the allegations of unlawful discharges, Nonprofit is not required to list every violation with its corresponding dates; a range of dates is sufficient notice. To burden plaintiffs otherwise would be contrary to the policy behind allowing CWA citizen suits. Nonprofit gave City sufficient notice and detail for City to identify and remedy its alleged violations, regarding both the sanitary sewer overflows, and the underground exfiltration and failure to comply with effluent limitations. Accordingly, Nonprofit pleaded enough facts to state a claim for relief. Court denied City's motion to dismiss.

United States v. Fallbrook Pub. Util. Dist., No. 51CV1247-GPC-RBB, 2019 WL 2184819 (S.D. Cal. May 21, 2019).

Government brought action to quiet title its rights to use the Santa Margarita River water systems in San Diego and Riverside counties. Objectors argued that the Steering Committee should not be responsible for

the proposed costs from the Watermaster for his involvement in the Anza Settlement Proceeding; a proceeding that solely involves Tribes, of which Steering Committee member is part of. The court determined that (1) the Watermaster's duties cover the entirety of the Santa Margarita Watershed, (2) the Steering Committee members consist of substantial water users within the Watershed, and (3) their purpose is to facilitate litigation. However, the court also stated that a substantial water user, those who irrigate eight or more acres or produce the equivalent, would bear the substantial brunt of the Watermaster's costs. The court found that the decision to have each entity of the Steering Commission pay for the Watermaster's cost is not burdensome or unfair. As such, the court overruled the objections and approved the Watermaster Report.

E.D. New York
Long Island Pure Water Ltd. v. Cuomo, 2019 WL 1317335 (E.D. N.Y. March 22, 2019).

The Navy and predecessors to aerospace Company operated a military aircraft construction facility. The facility discharged hazardous chemicals into the soil, including perchloroethylene ("PCE"), trichloroethylene ("TCE"), vinyl chloride, and methyl chloroform. The chemicals spread into the soil and created elevated radium levels and unnatural levels of radioactive gas, radon. Long Island Pure Water ("LIPW") alleged that the Navy and Company failed to follow Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and Resource Conservation and Recovery Act ("RCRA"). The Navy and Company moved to dismiss. The court granted defendant's motions and dismissed the action. The court dismissed the action based on sovereign immunity, and no exception applied because LIPW was seeking costs rather than injunctive relief. The court also noted that seeking a private counsel to oversee a government cleanup may be barred by the very statutes their action sought to enforce and cited 42 U.S.C.A § 9613(h), which limits judicial review of certain federal cleanup efforts.

W.D. Washington
United States v. Pillon, No. C18-1845-JCC, 2019 WL 2172839 (W.D. Wash. May 20, 2019).

Property Owner who was using his property as an unpermitted landfill was sued by United States' Environmental Protection agency to be given the right to: (1) remove known, contaminated soils, (2) test soils to ensure that

all of the contaminated soils are removed, and (3) install groundwater monitoring wells to monitor for contamination in the water. The court held that since the EPA designated specific zones of likely contamination and only planned to be there for two months, their plan was tailored and not overly broad. Further, the court held that under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the EPA may obtain access to enter a site through consent of the owner, an administrative order, or a court order directing compliance with the request if the property is of the correct type. Here, the court stated that there was no genuine dispute as to whether the property was the type of property that CERCLA enables the EPA to access. Additionally, the EPA had a reasonable basis for believing there to be a release or a threat of release of hazardous substances since they had taken samples from the Property. As such, they granted the requested response actions.

State

Georgia
City of Guyton v. Barrow, No. S18G0944, 2019 WL 2167460 (Ga. May 20, 2019).

Property Owner brought action seeking judicial review of whether the Environmental Protection Division of the Georgia Department of Natural Resources (EPD) properly issued a permit to the City of Guyton to build and operate a land application system that would use treated wastewater for irrigation. The principal issue the court addressed is what standard of deference was to be given for an agency interpretation of a legal rule; specifically, the antidegradation rule, which is designed to limit the discharge of pollutants into Georgia and United States waters in compliance with the Clean Water Act (CWA). Ultimately, the court determined the antidegradation rule did not require EPD to complete antidegradation analysis for nonpoint source discharge. Since the antidegradation rule merely satisfied the state's requirements under CWA, which only regulates point sources, CWA, and therefore the antidegradation rule, did not apply to the nonpoint sources of water. Further, the court noted that the Environmental Protection Agency could not force states to regulate conduct indirectly where they could not regulate the same conduct directly.

Illinois
Tzakis v. Berger Excavating Contractors, Inc., 2019 IL App (1st) 170859, 2019 WL 2320960 (Ill. May 30, 2019).

Homeowners brought suit against Hospital constructed adjacent to their neighborhood alleging that the hospital is constructed in such a way that the hospital's storm water drainage system discharged onto Homeowners properties and caused flooding. Further, Homeowners alleged that several Cities violated various duties with respect to the drainage system. The trial court applied the *Coleman* standard and granted defendant's motion to dismiss on the basis of the public duty rule, which states that government's duty is not to any individual but the community at large. This rule was abolished by the Illinois Supreme Court roughly six months after the initial dismissal was granted. Plaintiff's sought retroactive application of the abolishment of the rule. The court determined that the application of the *Coleman* standard, and therefore the granting of the motion to dismiss, was erroneous on this basis. However, the court also held that the dismissals on the basis of the Tort Immunity Act were properly dismissed.

Missouri
Altidor v. Broadfield, No. ED 107087, 2019 WL 2179970 (Mo. Ct. App. May 21, 2019).

Homeowners brought action against Owner and Operator of a metal fabrication facility alleging toxic contamination from the site. On appeal of a granted motion for summary judgment, the court held that Facility did not actually cause the spill of contaminants of the site since it was undisputed that all spills pre-dated ownership by Facility and there was no corporate affiliation between Facility and prior owners. Additionally, even if there were more spill after Facility took ownership, no migratory contaminate plume could have reached Homeowners' property. The court also determined that Homeowners failed to carry their burden to show that Facility was a "mere continuation" from the previous owners, and thus liable for their debts, since they could not show any of the relevant factors. Further, the court held that a genuine issue of material fact precluded summary judgment on whether Facility failed to prevent migration of contaminants off-site.

South Carolina
Sierra Club v. S.C. Dep't of Health & Envtl. Control, 826 S.E.2d 595 (S.C. 2019).

Nonprofit appealed Department's renewal of Operator's disposal facility for radioactive wastes. Department licenses and oversees Operator's facility under Atomic Energy Act. Operator must comply with AEA regulations and additional Department requirements. Nonprofit contends Operator's waste disposal practices did not meet regulatory requirements by not adequately preventing groundwater contamination by radioactive pollutants. Initially, the Administrative Court ordered Operator to conduct studies to investigate implementation of procedure that would better shelter the waste facilities from rain water and the subsequent pollution. Court may only reverse if Administrative Court's initial decision was an error of law. Operator's appeal focused on its compliance with the State Code governing disposal and minimization of water migration onto disposal units of hazardous materials. Court determined relevant sections of the State Code were technical requirements that Operator must fulfill under its license, but Operator is not required to take any specific action to achieve compliance. Operator's duty was to evaluate and report on compliance concerns. Court determined that State Code only required Operator to detect and remove water and other liquids from disposal units, rather than radioactive waste material. Court affirmed that the respective State Code which requires minimization of water migration onto disposal units does include rainfall and that minimization does not require total prevention. Additionally, Department must consider ALARA when evaluating Operator's approaches to compliance, but ALARA may not be the only consideration. The Court also is not required to give deference to Department's interpretation of its statutes when the interpretation is contrary to the plain meaning of the code. Requiring Department and Operator to affirmatively demonstrate compliance with regulations does not impermissibly shift the burden of proof. The initial burden of proof was on Nonprofit, but the burden shifted to Department and Operator on appeal.

Vermont
Vt. Agency of Nat. Res. v. Parkway Cleaners, No. 2018-165, 2019 WL 1412580 (Vt. Mar. 29, 2019).

State filed action against Drycleaner claiming that they were liable for not cleaning up a carcinogenic chemical that had been dumped onsite or released from its equipment. Drycleaner filed summary judgment motion

alleging that State failed to show that the chemical had been released on the property during the time they owned the property. The trial court granted summary judgment and injunctive relief motions for State, finding that the Drycleaner was strictly liable for the clean-up and that State was entitled to injunctive relief, requiring Drycleaner to continue investigating the site and begin necessary remediation. Drycleaner appealed to the Supreme Court of Vermont, claiming that: (1) it was not liable for remediation of the site because they were not the owners at the time of the spill, (2) the injunction requiring the investigation of the site was not appropriate as it did not outline what was required of the Drycleaner in sufficient detail, and (3) that the trial court should not have allowed the action to be commenced by State because the statute of limitations had run. The Court affirmed the lower court ruling holding that: (1) Drycleaner was strictly liable for remediation of environment because of release of chemical, (2) injunction requiring Drycleaner to perform site investigation and corrective action was sufficiently specific, and (3) Drycleaner waived statute of limitations defense. The Court held that the plain language of the statue clearly outlined that Drycleaner should be strictly liable as the current owner for the cleanup, and the injunctive relief was proper because it established that it must implement a clear plan of mediation that would be submitted to the agency. Additionally, the Court held that Drycleaner waived its statute of limitation defense when it failed to appropriately raise that affirmative defense in its Answer to State's original motion for summary judgment.

SELECTED LAND DECISIONS

Federal

Federal Claims
BP Am. Prod. Co. v. United States, No. 18-607, 2019 WL 1435047 (Fed. Cl. April 1, 2019).

Company brought suit against Government to recover over a million dollars in, allegedly, statutorily mandated interest on oil and gas overpayments. Company brought suit pursuant to the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA") and the Royalty Simplification Fairness Act of 1996 ("RSFA"). Government filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. Government's motion to dismiss was granted in part and denied in part. The court explained that because Company could not point to any specific lease provision requiring Government to pay interest on its royalty overpayments or incorporating former sections into the leases by reference, that portion of the complaint had to be dismissed.

S.D. New York
Bakken Resources Inc. v. Edington, 15 Civ. 8686, 2019 WL (ALC), 2019 WL 1437273 (S.D. New York Mar. 29, 2019).

Company brought action against Group alleging action under Racketeering Influenced and Corrupt Organizations Act ("RICO"). As part of a reverse merger, Group proposed depositing mineral assets into a public shell company. Group solicited investor contacts for a Private Placement Memorandum. Group controlled the shell company. In 2011, Company found that Group had misrepresented their background. Company then retained outside counsel. Based on this discovery, Group determined to cease any work relating to Company. Company brought complaint based on RICO violations, tortious interference, and violations of the Securities Exchange Act. Group filed Motion to Dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim. Group also filed a Motion for Sanctions against Company for the RICO claim. On the issue of jurisdiction, the court found that (1) RICO jurisdictional requirements were not met because Group is not domiciled in New York and Group's single trip to New York did not prove minimum contacts; (2) New York's Long-Arm Statute was not met as Company failed to establish any personal jurisdiction, even when all allegations were construed in favor of Company;

(3) the court did not need to transfer venue as refusing to do so did not severely prejudice either party. On the issue of the Sanctions for the RICO claim, the court found that (1) section 107 of the Private Securities Litigation Reform Act bars RICO claims alleging securities fraud; (2) Company's assertions created a bona fide dispute of fact or law; (3) Company's argument is not so devoid of strength to warrant sanctions. Therefore, the court denied the request for sanctions. In conclusion, court granted Group's motion to dismiss, denied Company's motion to transfer, and denied motions for sanctions.

S.D. Ohio

Ralph W. Talmage Trust v. Bradley, No. 2:17-cv-544, 2019 WL 1384430 (S.D. Ohio Mar. 26, 2019).

Trustee was conveyed an overriding 5% royalty interest in a lease. The assignment was made with exceptions providing that (1) the assignment did not apply to the currently producing wells, but did apply to non-producing well and future wells; (2) the Overriding Royalty Interests ("ORRI") did not apply to the first well drilled by Assignor offsetting each of the producing wells; (3) should the Assignor exercise pooling rights, ORRI shall be unitized; (4) if any leasehold estate is less than 100%, ORRI shall be proportionately reduced. This was recorded in two out of the three counties that housed the land. It was not recorded in Noble County. Assignees later obtained an overlapping lease. Assignees and Trustee both sought judgment to quiet title and a ruling on whether Trustee's override is valid. Assignees argued that summary judgment should be entered because Trustee violated the Ohio oil and gas recording statute. Trustee argued this recording statute did not apply to royalty interest leases. Court found that overriding royalty interests are interests in oil and gas leases because royalty interest is derived from the working interest of an oil and gas lease. However, the court declined to invalidate Trustee's assignment based on a question of fact as to whether Assignees were aware of the assignment and because Trustee attempted to cure the deficiency in recording. Therefore, the court denied Assignee's motion for partial summary judgment and granted in part and denied in part Trustee's motion for partial summary judgment.

S.D. Texas
Goodrich Petroleum Co. v. Goodrich Petroleum Corp. (*In re Goodrich Petroleum Corp.*), No: 16-31975, 2019 WL 1313399 (Bankr. S.D. Tex. Mar. 20, 2019).

Landowner Royalty Owner ("LRO") filed suit alleging Lessee improperly withheld royalty payments by deducting production costs arising from a third-party operator ("Operator"); LRO further alleged that the relationship between Lessee and Operator was beneficial to Lessee. The royalty clause at dispute called for LRO to bear proportionate production costs incurred by Lessee from unaffiliated third-parties whose relationship was not beneficial to Lessee. LRO and Lessee filed motions for summary judgment with the district court. The district court granted Lessee's motion, finding that LRO is obligated to pay its proportionate share of production costs associated with Operator activities. LRO asserted in its motion that Operator became affiliated with all parties involved when unitization of wells occurred, and this created a beneficiary relationship with Lessee. The district court granted Lessee's motion for summary judgment finding that the Operator and Lessee were unaffiliated entities because: (1) unitization does not alter the relationship between the two wholly separate corporate entities and the purpose of unitization is to maximize production of a single reservoir; (2) if LRO's interpretation of 'unaffiliated' was granted it would be too broad and would go against the principles of contract interpretation; and (3) that the presence of an agency relationship between Operator's subsidiary and Lessee does not alter the contractual relationship into a parent-subsidiary one. The district court further found that no beneficial interest was created because the relationship was contractual between Operator and Lessee, and the Lessee retained legal title to the hydrocarbons produced.

D. Utah
HEAL Utah v. PacifiCorp, No. 2:16-cv-00120, 2019 WL 1318350 (D. Utah Mar. 22, 2019).

Groups brought suit under the Clean Water Act ("CWA"). Corporation and Groups both filed motions for summary judgment on the claim. In 2007, Corporation installed a collection system in their surge pond. Group claimed Corporation violated the CWA when it installed the system without a § 404 permit. Under the CWA, § 404 authorizes permits to discharge dredged or fill material. In 2008, Corporation moved sediments from their surge pond. Groups argued that storms erode the sediment and move it downstream. Groups claimed this was a § 404 violation as they failed to

receive a permit under the CWA. Further, in 2016, Corporation repaired a pipe by excavating a part of the collection system, which Groups claimed was another § 404 violation. Court found that (1) Groups failed to file notice for the 2016 claim, so the 2016 should be dismissed. (2) None of Groups members suffered an injury in fact as required by Art. III of the Constitution. They did not suffer economic, environmental, aesthetic, or procedural energy. Therefore, they were barred from bringing suit. The court granted Corporation's motion for summary judgment.

W.D. Virginia
Dixon Lumber Co. v. Austinville Limestone Co., No. 7:16-cv-00130, 2019 WL 1441631 (W.D. Va. March 31, 2019).

Property Owner 1 (Dixon) brought suit against Property Owner 2 (Austinville) to recover costs of remediation and declaratory relief under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). The court was charged with deciding who of the two parties should be held responsible for costs of environmental remediation and reclamation of Property Owner 1's real property. Property Owner 2 had discharged pollution in the form of mine tailings into Property Owner 1's stream. The court granted both parties relief on their respective CERCLA claims. The court explained that Property Owner 1 should be held responsible for eighty percent of the costs and that Property Owner 2 for twenty percent and all the costs of "hauling." The court reasoned that because Property Owner 1 played a large part in the high cost of remediation, that they should bare a large portion themselves.

State

Mississippi
Barham v. Mississippi Power Company, 266 So.3d 994 (Miss. Mar. 28, 2019).

Owners brought action against Company seeking declaratory judgment to confirm and quiet title to property. Owners argued they owned lignite under Company's building, which Company did not dispute. Company filed suit to confirm and to quiet title, as well as asserting that lignite could only be removed economically by surface mining. Company asked to enjoin all defendants, and, in the alternative, asked for declaratory judgment that lignite removal would destroy the surface of the land, rending it unusable. Company also moved to transfer to chancery court, and their motion was

granted. In chancery court, both company and Owners filed motion for summary judgment agreeing no material facts were in dispute, asking for requested relief. Company argued Family was equitably estopped from claiming ownership of the lignite because they had remained silent while Company substantially improved the land. Family argued that Company wrongfully covered the lignite Family was entitled to, and that Family was not justly compensated. The chancery court denied summary judgment to Company on ownership and equitable-estoppel claims, and granted summary judgment on deprivation of Family's mining rights. Parties appealed. The court, reviewing *de novo* found that (1) the chancery court may hear the case because it has jurisdiction over quiet title actions; (2) that the chancery's grant and denial of summary judgment was rightful. The denied motion for summary judgment was due to the motion being fact based. The granted motion for summary judgment was due to the Mississippi Surface Coal Mining and Reclamation act, which caused Family to lose rights to the lignite. Therefore, the court affirmed the lower court's ruling.

Pennsylvania

PBS Coals Inc. v. Dept. of Transportation, No. 140 C.D. 2018, 2019 WL 1387883 (Commw. Ct. of PA, Mar. 28, 2019).

Company brought action against Department, alleging Department had effectuated a *de facto* taking. Company claimed that construction of a highway isolated their land, and therefore made the land incapable of mining. Company requested court find the compensation owed to them due to the claimed *de facto* taking. Department responded that Company still had access to the beneficial use and enjoyment of their property, could still access their property, and that Company had not applied for mining permits before Department began construction. Trial court found that Company failed to establish a *de facto* taking because Company did not show exceptional circumstances that "substantially deprived them of their ability to mine coal." Company appealed. The court found that (1) because there was no specific language in the lease providing Company a right-of-way across land, trial court erred in finding Company had alternative access; (2) there was no implied right to use the surface of the land to transport coal; (3) the land was landlocked because of this lack of implied right; (4) Department's actions caused Company to lose access to their land because it became landlocked. The court reversed and remanded, and ordered a determination of the amount of damages to Company.

West Virginia

Bruce McDonald Holding Co. v. Addington, Inc., No. 17-0847, 2019 WL 1319859 (W. Va. Mar. 20, 2019).

Landowner Royalty Owner ("LRO") entered into a coal lease with Lessee in June of 1978, which required recurring minimum royalty payments in lieu of coal mining. Lessee sought to terminate the lease in June 1984, giving notice to LRO that it sought arbitration to determine whether commercial quantities of coal were present on the leased acreage. LRO filed suit seeking to compel payment of royalties and to stay arbitration. In 1988, the trial court found that Lessee owed LRO the minimum royalty payments due under the lease instead of commencing mining activities. LRO accepted the minimum royalty payments from 1988 until 2016 when they filed suit seeking declaratory judgments that: (1) Lessee had obligation to diligently mine coal, and (2) annual minimum royalties were to be based on comparable sales of neighboring mines, along with damages for the breach of duty and miscalculated royalties. Both Lessee and LRO filed summary judgment motions with the trial court. The trial court granted summary judgment against LRO. LRO on appeal asserted two claims: (1) seeking declaratory judgment that Lessee had a duty to diligently mine coal, and (2) that minimum royalty payments should be determined off comparable sales of coal by other mining companies. The Supreme Court of West Virginia affirmed the lower court judgment, holding that LRO claims were disposed of via waiver and collateral estoppel. The Court reasoned that LRO waived any duty on Lessee's part to "diligently mine coal" because they waited 28 years to compel performance of Lessee's duty after filing original suit, they had knowledge of their right to require Lessee to so act, and by accepting the minimum royalty payments instead of requiring diligent mining, they waived their claim. The Court then held that LRO was collaterally estopped from litigating the issue of "comparable coal sales" to be the baseline for the minimum royalty determination since the issue was litigated in the original 1988 suit, in which the trial court fixed the rate and LRO could have brought issue with the trial court's decision at that time.

SELECTED ENVIRONMENTAL DECISIONS

Federal

D. District of Columbia

Potomac Riverkeeper Inc. v. Wheeler, No. 17-cv-1023 (DLF), 2019 WL 1440128 (D.D.C. March 31, 2019).

Conservatory and Recreational Organizations (CRO) brought suit against the EPA, because the EPA approved the 2016 Impaired Waters List. The list did not include any part of the Shenandoah River, despite complaints from various organizations and citizens about excessive algae growth. CRO raised a motion for summary judgment, and EPA brought a cross motion for summary judgment. State refused to use citizen-provided information about the algae growth in the Shenandoah River when classifying State waters as impaired. State's impairment assessment claimed that it needed more information before classifying the river as impaired. EPA deferred to State's assessment and approved the classifications. EPA found that State's decision to wait and gather more data was reasonable. CRO argued that EPA was unreasonable in relying on State's limited algae data, data which rendered the impairment assessment ineffective. However, the court found that EPA correctly deferred to State regarding the decision to not use CRO's algae data when gathering more information about the river's algae situation. The court also found that CRO's argument that EPA wrongly relied on State's commitment "to develop numerical thresholds for assessing algae-related impairment in the future" was unpersuasive. EPA only marginally relied on State's future assessments to make its decision; EPA's decision was simply that State's assessment and desire for more information was reasonable. Thus, the court granted EPA's cross-motion for summary judgment, denying CRO's motion.

Continental Resources, Inc. v. Gould, Civil Action No. 14-65 (RDM), 2019 WL 1440111 (D.D.C. March 30, 2019).

The Secretary of the Interior released regulations on how to value the production of natural gas for royalty purposes. There are three methods of valuation. The first methodology values the gas sold to non-affiliated entities under arms-length contracts based on the "gross proceeds accruing to the lessee." The second methodology values gas sold to "marketing affiliates", "entities that purchase gas exclusively from producers that own or control them", "based on the downstream sale by the marketing affiliate." The third methodology values gas sold under a "non-arms-

length" contract under three complex benchmarks that change depending on whether the gas is processed or not. Gas Extractor used the first method for appraising oil value when selling to a processor between 2003 and 2006. The Minerals Management Service ("MMS") issued an audit, stating that the first method for valuation was not viable, because Gas Extractor and processor were affiliated entities. Under its method, MMS demanded Gas Extractor report and pay nearly two million more dollars in royalties. Gas Extractor appealed to the Office of Natural Resources Revenue ("ONRR"), which affirmed MMS and found that the first method was ineffective. However, ONRR found MMS's method wrong as well; MMS's proposed method was intended for refined gas sales, and this was a sale of unrefined gas. Thus, ONRR used a different method for valuing the gas. Both parties appealed and moved for summary judgment. The court held that ONRR's value calculation was not consistent "with the plain language of the valuation regulation" because the regulation only dealt with the sale of processed gas by Processor, not unprocessed gas sold by Gas Extractor to Processor. Consequentially, ONRR's decision was "clearly erroneous and inconsistent with the regulation." The court also found that ONRR's decision was "arbitrary and capricious" since ONRR failed to explain its reasoning behind its proposed valuation regulation calculation. ONRR's decision was also inconsistent; it refused to use one valuation method because of the difference between processed and unprocessed gas, but then tried to use another method that had the same flaw. The court granted summary judgment to Gas Extractor, denying summary judgment to MMS. The court remanded the case to ONRR for further proceedings consistent with the court's opinion.

Sierra Club v. Perry, No. 17-CV-2700 (EGS), 2019 WL 1130723 (D.D.C. Mar. 12, 2019).

The Sierra Club filed suit on behalf of its members to require the Secretary of the Department of Energy to comply with the Energy Independence and Security Act of 2007 ("EISA")'s mandate to establish energy efficiency standards for manufactured housing. The Secretary replied to the complaint with a motion to dismiss for lack of standing. The United States District Court for the District of Columbia found that the Sierra club had standing to sue under the theory of associational standing by which the organization can sue on behalf of its members, if said members would be entitled to sue on their own behalf. The Court found that members of the Sierra Club were owners and or potential purchasers of manufactured housing who had actual

or imminent health, economic, and procedural injury as a result of the Secretary's failure to promulgate standards in accordance with EISA.

W.D. Louisiana
Evanston Ins. Co. v. Riceland Petroleum Co., 369 F. Supp. 3d 673 (W.D. La. 2019).

Insurer brought action against Insured, seeking declaratory judgment that policies did not cover Insured's soil and water contamination. Louisiana's duty to defend has an "Eight Corners Rule," wherein the court compares the four corners of the petition against the four corners of the insurance policy to determine whether Insurer has duty to defend Insured. Both Policies have clauses excluding coverage for damage by pollutants, and Insurer has burden of proof that exclusionary clause applies. Louisiana has a 3-part test to determine if this pollution exclusion clause bars coverage, namely (1) whether the insured is a "polluter," (2) whether a pollutant is causing the injury; and (3) whether there was a discharge, etc. of a pollutant. The purpose of pollution exclusion clauses is to exclude coverage for environmental pollution. Under the test, Insured is a polluter, the discharged substances are pollutants, as they are normally understood, and Insured discharged pollutant and failed to stop the discharge when made aware. Also, the pollution was not an "occurrence" within an effective and reasonable interpretation of the policy's coverage that would invoke coverage. Insurer also does not have duty to defend the damage to property leased, owned, or controlled by Insured, per another policy exclusion. Ultimately, the pollution exclusion clauses in the policies preclude coverage. Insurer has no duty to defend Insured for environmental pollution damage.

D. Montana
2-Bar Ranch LP v. United States Forest Service, No. CV 18-33-BU-SEH, 2019 WL 1368086 (D. Mont. March 26, 2019).

Ranchers challenged an administrative decision by the Forest Service agency regarding grazing operations in a national forest. The agency, following promulgated regulations intending to enforce the Federal Land Policy and Management Act ("FLPMA") and the National Forest Management Act ("NFMA"), reduced grazing privileges for Ranchers for non-compliance based on a 1997 requirement. Rancher disputed the requirement (regarding dry cottonwood allotments), noting that standards had shifted over the years and the 1997 requirement was overridden by

newer standards. The dispute was analyzed under the Administrative Procedures Act ("APA"), which restricts judicial analysis to the administrative record and gives substantial deference to the administrative decision. The court dismissed the agency's contention that the judicial review was inappropriate for jurisdictional reasons, as (1) each of the foundational statutes considered judicial review governed by the APA, (2) standing was satisfied as "[a] court need not address standing of each plaintiff if it concludes that one plaintiff has standing," (3) the end of the grazing season did not render the issue moot, (4) the determination was a final agency action. The court then overturned the agency determination, as a plain language interpretation of the most recent plan, a 2009 "Forest Plan," invalidated any potential application of the older, 1997 regulation (or subsequent plans up to the 2009 plan). The 2009 standard applied to all grazing lands without management plans or operating instructions. Older, or different, standards could only be applied if a site had a plan "designed specifically for" that site. Although the disputed site had a plan, the new standard should have been applied as the plan was not designed specifically for the Rancher's grazing lands. Therefore, the court overturned the agency decision as arbitrary and capricious under the APA. The court remanded the question of fee shifting.

S.D. New York
Power Authority of NY v. Tug M/V Ellen S. Bouchard, 14 Civ. 4462 (PAC), 2019 WL 1410368 (S.D.N.Y March 27, 2019).

The New York Power Authority ("NYPA") brought suit against Operator after a tug dropped anchor and damaged a submarine cable in the Long Island Sound. NYPA bore the costs of the environmental response and sought remedial damages against Operator under the Oil Pollution Act ("OPA") and the New York Oil Spill Laws ("NYOSL"). The sole issue before the court was whether OPA provided the proper framework for reimbursing environmental response costs. The anchor damaged an underwater cable system that provided electrical power to the area. The cable system contained a petroleum-based fluid that acted as a coolant and lubricant. The damage resulted in leaked fluid, which in turn required the environmental clean-up response. OPA allows a third-party to make claims against the originally responsible party for an oil spill in navigable waters when the spill occurs from a "vessel" or "facility." NYPA argued that a broad construction of the term "facility" was appropriate and therefore applicable to the cable damage. However, as the cables' primary purpose was to transmit electricity rather than store or transfer oil, the court was

unpersuaded that OPA's definition of "facility" applied to the cables. As NYPA could not pursue its OPA claim, the question remained of whether OPA's savings clause could allow it to pursue the NYOSL claim outside of a different "Limitations Proceeding." Although the court noted that OPA was intended to form a floor, rather than a ceiling, on a state's pursuit of a liability claim, OPA's savings clause should not be used to disrupt the careful balance between federal and state power. Therefore, the court denied NYPA's OPA claim and required that the state pursue its NYOSL claim in the Limitations Proceeding.

M.D. North Carolina
Braswell v. Colonial Pipeline Co., 1:18CV580, 2019 WL 1459053 (M.D.N.C. April 2, 2019).

Landowner sued Pipeline Company over a gas leak in a gas transportation pipe and sued the Restoration Company for harm to Landowner's property from the leak. Restoration Company filed a Motion to Dismiss, claiming it owned Landowner no duty, breached no duty, and was not the proximate cause of Landowner's. injuries. Restoration Company was only hired by Pipeline Company to carry out a site assessment and engage in limited remediation efforts through soil testing and excavation activities. The court held that the restoration activities left the Restoration Company with no duty of care to Landowner's, because the activities did not threaten any harm to Landowner's property. Landowner also failed to allege any facts that showed a violation of such a duty of care, even if it had existed, nor allege facts showing that Restoration Companies activities actually caused any harm. Landowner mostly alleged facts against Pipeline Company, and only mentioned Restoration Company when claiming that both defendants were jointly and severally liable for all actions taken. Landowner failed to ever identify any specific restoration activities that failed to deal with the contamination, thus creating no basis for the claim against Restoration Company. The court found that such claims were not enough for even an allegation of negligence or willful and reckless conduct. The court thus granted Restoration Company's Motion to Dismiss.

S.D. Ohio
Rover Pipeline LLC v. Kanzigg, Case No. 2:17-cv-105, 2019 WL 1367675 (S.D. Ohio March 26, 2019).

In an ex parte hearing, Company requested a temporary restraining order that would grant it easements in order to undergo repairs to property around

a pipeline. Company operated the pipeline in compliance with certain environmental regulations and through the cooperation of various parties who granted easements along the pipeline's route. Company's issue necessitated an equitable remedy by the court because of ongoing "slips" along the pipeline. "Slips" referred to rock and soil progression down a slope due to "gravity and geologic" forces, and the slips created safety and environmental hazards. Company could not address the slips in certain areas without easements from the property owners. Six (6) of the eight (8) owners in question had granted temporary easements, but the remaining two (2) could not be located. The equitable remedy related only to the remaining two (2) properties. The court was primarily concerned with the lack of notice to the opposing parties—the missing property owners—and the irreparability and immediacy of the alleged harm. Company satisfied the failure of notice and appearance of the property owners by detailing to the court its attempts to identify and locate the owners. The immediacy of harm was apparent to the court by the ongoing nature of the "slips" and the narrow window state law provided to clear the problem trees (the trees housed a protected species and could only be cleared during a certain period which would end five (5) days from the hearing). The court was similarly satisfied that the potential harm to the pipeline and inability to comply with environmental law constituted an irreparable harm. Therefore, the court granted the temporary restraining order subject to a bond.

D. Utah

Utah Physicians for a Healthy Environment v. Diesel Power, No. 2:17-CV-32, 2019 WL 1126347 (D. Utah Mar. 12, 2019).

An environmental organization ("Organization") brought suit against several companies and officers of companies (collectively "Companies") relating to the diesel automotive industry. Companies responded with motions to dismiss for lack of standing. The court denied the motion to dismiss for lack of standing, finding that there was injury in fact that could have been caused by Companies; this injury could be redressed by judicial means. The important aspect of this decision centers on the District of Utah's adoption of the responsible corporate officer doctrine with regard to civil claims under the Clean Air Act (CAA). The responsible corporate officer doctrine first applied to criminal claims under the CAA. This doctrine states that officers were subject to CAA liability in their personal capacity where said corporate officers had authority to prevent or correct CAA violations, failed to exercise that authority, and had knowledge of the facts giving rise to the violation. While the Tenth Circuit has yet to decide

whether this doctrine applies to civil claims under the CAA, the District of Utah decided to adopt this approach, which is followed by several federal courts. Under this approach, corporate officers who meet the requirements of the responsible corporate officer doctrine of the CAA can be held personally liable for violations of the CAA in Utah.

W.D. Washington
Lighthouse Resources Inc. v. Inslee, Case No. 3:18-cv-05005-RJB, 2019 WL 1436846 (W.D. Wash. April 1, 2019).

Coal Company and Railroad sued the State of Washington for its denial of a water quality certification and denial of a sub-lease of state aquatic land for a coal export terminal. Railroad was an intervenor, and brought a foreign affairs doctrine claim by itself. Railroad claimed the foreign affairs doctrine preempted the denial of the water quality certification. State moved for summary dismissal of this claim. Railroad filed a cross-motion for summary judgment on the claim. The court analyzed two forms of the foreign affairs doctrine, the doctrine that state laws that intrude on the exclusively federal power over foreign affairs will be preempted, to address this claim: conflict preemption and field preemption. Conflict preemption is where there is an express conflict between state laws and an executive agreement or treaty. Field preemption is where a state law can be preempted if it (1) does not concern an area of traditional state responsibility and (2) it "intrudes on the federal government's foreign affairs power," even without an express federal policy. Under conflict preemption, the court found that Railroad failed to identify any policy in an executive agreement or treaty that contradicted the State's decision. The court also found that field preemption did not apply; the State's decision regarding the water quality certifications was within its general police powers and did not "intrude on the federal government's foreign affairs power." Consequentially, the court granted State's motion for summary dismissal on the foreign affairs preemption claim and denied Railroad's motion for summary judgment.

State

Georgia
Macon-Bibb Cty. Planning and Zoning Comm'n. v. Epic Midstream, LLC, 862 S.E.2d 403 (Ga. Ct. App Mar. 15, 2019).

This is a discretionary appeal whereby a Planning and Zoning Commission ("Commission") appeals the decision of the superior court whereby the court reversed the Commission's denial of a conditional use permit. In this case the Court of Appeals of Georgia reversed the decision of the superior court. The appellate court articulated the following standards for review in cases of this nature: (1) the superior court is to apply the "any evidence standard of review" and (2) appellate courts are to evaluate whether any evidence can support the decision of the local governing board when reviewing decisions. (citing *Bulloch County Bd. of Comm'rs. v. Williams*, 332 Ga. App. 815, 773 S.E.2d 37 (2015)). The issue in this case is that there was significant record evidence before Commission to support its decision to deny the conditional use application. Evidence included statements from project planners and community members, petitions, and assessments. Specifically, even though the superior court acknowledged that evidence existed to support the conclusion of the zoning commission, the court then went a step further and weighed that evidence concluding that the evidence was not specific enough to support denial of the application. As the record of evidence brought forth to Commission supported the Commission's decision to deny the conditional use permit, the superior court erred in reversing the decision of the Commission and granting the permit.

Ohio
Columbia Gas Transmission, LLC v. Ohio Valley Coal Co., No. 17AP-413, 2019 WL 1313370 (Ohio Ct. App. Mar. 21, 2019).

Gas Pipeline Operator ("Gas Operator") sought declaratory judgment, quiet title, and damages based on surface subsidence from Coal Mine Operator ("Coal Operator"). Gas Operator is seeking damages for the cost of preventative measures put in place to protect a gas pipeline from damage that could result from Gas Operator's pipeline. Both parties have appealed from the trial court's judgement. The nexus of the appeal was that the trial court's judgment was not internally consistent. The court had specifically held that the existing coal severance deeds were not enforceable to immune Coal Operator from liability but then did not award damages when there was evidence of damage incurred by Gas operator. The court addressed

issues presented in the appeal as follows. First, the trial court had properly applied relevant federal and state statutes governing Coal Operator's obligations; and the subsidence damages waivers found in the coal severance deeds are not effective to eliminate or curtail Coal Operator's liability toward Gas Operator for damage to the pipeline. Second, the best conclusion that can be drawn from the situation is to apply the foreseeability rule to evaluate for damages based on prevention costs as part of the total damages suffered. Furthermore, it was both reasonable and expected for Gas Operator to take steps to protect its pipeline. The trial court erred in not allowing the assignment of damages.

Pennsylvania

In Re: Penneco Env't Solutions, Inc., 205 A.3d 401 (Pa. Commw. Ct. Mar. 8, 2019).

This case concerns a zoning appeal. The original zoning matter involved Oil Company, who sought a permit to convert its well from a producing well to an underground injection well. A local borough ("Borough") brought suit, challenging the trial court's reversal of the Zoning Hearing Board's ("ZHB") decision. ZHB held an initial review of Oil Company's petition to convert the well and denied it. Then ZHB denied Oil Company's challenge to the validity of the relevant ordinance on the ground that it was not ripe for review because Oil Company had not yet obtained federal and state permits for the proposed conversion of the well. Oil Company appealed the denial of the petition to the trial court, and the trial court held that ZHB erred in concluding Oil Company's validity challenge was not ripe for review. The challenge was ripe because Oil Company met its burden by proving the zoning ordinance improperly excluded a recognized, legitimate business activity. ZHB denied Oil Company's challenge on the baseness of ripeness rather than considering the merits. The present court has repeatedly held that in cases where permits for land development are required from agencies outside a municipality, in a land development proposal, it is most appropriate (where applicable) to grant a proposal on condition of receiving the outside permits rather than denying the proposal outright. Ultimately, the issue was ripe for review and the validity challenge should have been reviewed on the merits. Accordingly, the zoning ordinance was invalid, and Oil Company was entitled to site-specific relief as to the proposed well changes. This court affirms the decision of the trial court.