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Recent Case Decisions

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All case citations are as of March 13, 2016. 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 March 13, 2016. This PDF version of the Case Report is word-searchable. If you have any suggestions for improving the Case Report, please e-mail the editorial staff at onej@ou.edu.

Federal

United States Court of Federal Claims

System Fuels, Inc. v. United States, Nuclear Reg. Rep. P. 20,761, No. 03-2621C, 2016 WL 537617 (Fed. Cl. Feb. 10, 2016).

Several nuclear energy companies (Plaintiffs) filed suit against the United States alleging that the Department of Energy (DOE) breached the Standard Contract that each entered into with DOE outlining the disposal of nuclear fuel. At issue was the DOE's breach of a 1983 Standard Contract for the disposal of spent nuclear fuel and/or high level radioactive waste, which specifically dealt with those who generated or held title to high-level radioactive waste or spent nuclear fuel of domestic origin. The Government was found liable for partial breach of contract, and the only issue before the Court of Federal Claims was the amount of damages owed to Plaintiffs. The Court of Federal Claims made a number of findings regarding monetary recovery and held that Plaintiffs should recover damages for their dry fuel storage project, including salaries of employees on that project. The final award to Plaintiffs was in the amount of $49,403,339.

District of Columbia Circuit

Xcel Energy Servs. Inc. v. F.E.R.C., No. 14-1282, 2016 WL 874746 (D.C. Cir. Mar. 8, 2016).

Power Company appeals orders from Regulatory Commission, which ultimately denied the Power Company refunds from a rate schedule that it deemed unfair. The Regulatory Commission had allowed a tariff revision filed by the Southwest Power Pool (SPP) to take effect without suspension or a voluntary refund commitment, despite the Power Company raising material issues and complaints about the tariff rate. The rise of a material issue warranted a Section 205 Review of the Federal Power Act regarding the tariff rate, which was not granted. When the Power Company filed for a rehearing, during which the Regulatory Commission found it had erred as a matter of law, but that it lacked any jurisdiction to retroactively refund the rates. Regulatory Commission therefore asked the SPP to file either a removal of the tariff or a refund of the rates starting on February 22, 2013. Power Company appealed the Regulatory Commission's order stating that as no extensive Section 205 Review was completed prior to the implementation of the tariff, a retroactive refund should be deemed both necessary and proper. The Circuit Court ultimately agreed with the Power Company, therefore remanding the case so the Regulatory Commission can conform with such findings.

State

Colorado

Lindauer v. Williams Production RMT Co., 2016 COA 39 (Colo. App. 2016).

Lessors leased their mineral rights to Company retaining a leasehold royalty interest. Company produced gas from the mineral estate and incurred costs for compressing, gathering, and processing the gas. Company did not deduct any of the costs that accrued from the gas until it reached the "tailgate" of a processing plant, where it entered into the mainline pipeline and reached its first commercial market location. Prior to Company's production of the gas, it entered into long-term contracts with pipeline companies so it could reserve capacity on the mainline pipeline to transport the gas to downstream markets where it could obtain higher sale prices of the gas. Company subsequently deducted the costs it incurred transporting the gas from the "tailgate" to the downstream markets from Lessors' royalty. Lessors brought suit, alleging that the Company may only be allowed to deduct those costs if it can show that the costs are reasonable and that their "royalty revenues increase in proportion with the costs assessed against the royalties" on a month-by-month basis. Company alternatively argued that the only test that should be applied is the "prudent operator rule." This rule examines Company's overall reasonableness in entering into these long-term contracts to determine whether the contracts benefit both Company and Lessors more than selling the gas at the "tailgate" or the place of first marketability. The Colorado Appellate Court agreed with Company and found that transportation costs incurred after the gas reached the "tailgate" are deductible if those costs are reasonable. Additionally, the Court found that Company was not required to show that those costs either increased Lessors' royalties or enhanced the value of the gas.

Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP, 2016 COA 33 (Colo. App. 2016).

Mineral Sellers appealed the Colorado District Court's order granting Law Firm's motion for

summary judgment. Mineral Sellers sold oil and gas interest to Lario Oil and Gas Company (Lario), who served as an agent for Tracker, an unidentified principal in the transaction. Tracker was also Law Firm's client. Seller alleged that Law Firm: (1) engaged in a civil conspiracy to use agent buyer as a strawman purchaser, (2) aided and abetted agent's and principal's breach of fiduciary duty, (3) tortiously interfered with Seller's business expectancy, (4) aided and abetted fraud, (5) engaged in conspiracy to commit fraud, and (6) committed fraud. The Colorado Court of Appeals affirmed the lower court's decisions and held that the (1) agent, principal, and Law Firms' scheme to purchase Mineral Seller's oil and gas interest through use of strawman did not amount to fraudulent conduct; (2) purchase and sale agreement's creation of an area of mutual interest did not create a joint venture, thus no fiduciary interest between seller, purchasing agent, and its principal; (3) Mineral Seller's assertion that the Law Firms misled Mineral Seller and its joint venture partners into believing the Law Firms were acting solely as legal counsel to agent, stated a claim for fraudulent nondisclosure rather than affirmative fraud; (4) seller failed to allege that Law Firms had a duty to disclose that it represented only undisclosed principal, as required to state a claim for affirmative fraud, civil conspiracy to commit fraud, and aiding and abetting fraud; (5) seller could not have relied on law firm's alleged failure to disclose that it represented only agent buyer's principal.

Louisiana

St. Tammany Parish Government v. Welsh, No. 2015 CA 1152, 2016 WL 918361 (La. App. 1 Cir. 2016).

In 2010, the Parish completed a rezoning process of unincorporated areas within its boundaries. In 2014, the Louisiana State Commissioner approved a drilling and production permit to explore for and produce oil and gas on land located within the Parish. The Parish filed suit against the Commissioner alleging that such a permit regarding the land within their rezoning area was an unconstitutional preemption of local power. The Appellate Court found that Louisiana state law preempted the Parish's zoning laws because the clear language of state law demonstrates the legislature's intent to preempt any local area of law that affects the State's regulation of its oil and gas activity. In addition, the Parish also argued that the Commissioner did not consider its master plan before proceeding with activity that affected the Parish's plan. The Court found that the Commissioner did address and consider the Parish's plans before going through with the exploration and production process. Therefore, the Appellate Court held that the Commissioner may proceed with the exploration and production unit zoned within the boundaries of the Parish.

Regions Bank v. Questar Exploration & Production Corp., 184 So.3d 260 (La. Ct. App. 2 Cir. 2016).

In what began as an action against an exploration and production company for the failure to develop mineral leases, mineral rights owners later amended their petition to ask the court to declare that the leases in question had terminated. A Louisiana statute provided that leases that contain terms extending beyond 99 years are invalid. The trial court, holding the statute was inapplicable to the leases, entered summary judgment in favor of Lessors, and the mineral rights owners appealed. The Court of Appeal affirmed the trial court's decision, holding that since the judgment certification defects were cured by the trial court and resulted in proper certification, the Court of Appeal did indeed have jurisdiction to review partial summary judgment. Moreover, they also held that the leases were not perpetual in nature, and therefore not void from the beginning as against public policy. The action was then remanded for further proceedings.

Mississippi

Ward v. Harrell, 2015-CA-00101-COA, 2016 WL 703099 (Miss. Ct. App. Feb. 23, 2016).

Ward and Harrell each claimed ownership of the mineral estate under a tract of land now owned by Ward (Subject Tract). The chancery court reformed the deed to quiet title to the minerals in Harrell, reasoning that a prior deed was ambiguous. The court of appeals affirmed, but based its ruling on mutual mistake and scrivener's error rather than finding ambiguity. Harrell, Ward's predecessor-in-interest to the Subject Tract, had previously conveyed the Subject Tract to Martin by warranty deed which stated, "[t]he Grantee herein retains all mineral rights on said land and property." Martin conveyed the Subject Tract to Ward by warranty deed excepting all minerals in and under the Subject Tract "which have been previously reserved or conveyed." Both Ward and Harrell subsequently granted oil and gas leases covering the Subject Tract. The court determined that actions taken by Harrell prior to the conveyance to Martin, including granting three oil and gas leases and correcting the legal description, coupled with the lack of any indication that Martin ever attempted to claim the mineral estate and later granted the Subject Tract to Ward "subject to" the prior reservation, satisfied the relevant evidentiary standard of proving

mutual mistake and scrivener's error beyond a reasonable doubt.

Montana

Wicklund v. Sundheim, 2016 MT 62 (Mont. 2016).

Grantors conveyed real property to Grantees in a 1953 Warranty Deed, which included a 3/5ths reservation in the mineral interests and a 3/5ths reservation of any and all delay rentals. Prior to this deed, Grantors' predecessors conveyed an oil and gas lease on certain portions of the land to a third party, but the lease expired in 1958. The issue presented on appeal was whether the reservation language in the 1953 warranty deed terminated when the third party lease expired in 1958, thus placing all of the royalty interests in Grantees after that date. The Supreme Court of Montana held that the warranty deed was ambiguous and found that the lower court erred when it did not consider the extrinsic evidence presented by Grantors to resolve the ambiguity. Specifically, the Court held that because both parties signed a Communitization Agreement almost two decades after the 1958 deed expired, Grantees voluntary acknowledged that they were aware of Grantors' continuing mineral interest in the property at issue. Thus, the Court found that Grantees' conduct supported Grantors' argument that a 3/5ths royalty reservation in the 1953 warranty deed did not terminate when the third party lease expired in 1958. Furthermore, the Court found that the lower court erred when it held that the doctrine of laches applied, denying Grantors' claim to their 3/5ths royalty due to the length of time that elapsed before Grantors brought suit to confirm their royalty interests. Instead, the Supreme Court found that the evidence asserted a perpetual royalty interest each time there was new oil and gas development on the property. Therefore, the Court found that the Grantors were entitled to a 3/5ths royalty interest in the property at issue as reserved in the 1953 warranty deed.

Interstate Explorations, LLC v. Morgen Farm and Ranch, Inc., 2016 MT 20 (Mont. 2016).

An exploration company that had been leasing mineral rights from a farm and ranch estate brought declaratory action against the estate, alleging the estate was wrong in denying the company access to essential easements that would allow them to install a power line to operate the well drilled on property. The estate counterclaimed and sought monetary damages for an alleged hydrocarbon spill. The district court denied lessee's motion to dismiss counterclaims, which asserted that the lessor failed to first exhaust administrative remedies before initiating legal action for damages. The Supreme Court of Montana affirmed the lower court, holding that the remedies available under the Surface Damage Act are expressly stated—within the Act itself—as not being exclusive and exist as an attempt to facilitate communication to resolve damage disputes. Since they are not to be used as an agency or administrative proceeding that must be exhausted before litigation may be commenced, the estate was not required to pursue this remedy before litigating their damage claim against the exploration company.

New York

In re Sabine Oil & Gas Corp., 62 Bankr. Ct. Dec. 78 (Bankr. S.D.N.Y 2016).

Debtor, an independent energy company, filed for Chapter 11 Bankruptcy. Before the United States Bankruptcy Court was Debtor's motion for an order authorizing rejection of certain executory contracts between Oil & Gas Corporation (Corporation) and Gas Gatherer as well as between Corporation and Holding Company. Corporation became party to two contracts with Gas Gatherer, a gas gathering agreement and condensate gathering agreement (collectively, Gathering Agreements). Corporation also became party to two contracts with Holding Company, a production gathering, treating and processing agreement and a water and acid gas handling agreement (collectively, Processing Agreements). Each of these agreements were governed by Texas law. The Court found the Debtor satisfied the standard, "whether a reasonable business person would make a similar decision under similar circumstances," for the rejection of the agreements. However, both Gas Gatherer and Holding Company objected to Debtor's proposed rejection arguing that Corporation's contractual covenants "run with the land." A covenant runs with the land when: (1) it touches/concerns the land; (2) it relates to a thing in existence or specifically binds the parties and their assigns; (3) it is intended by the original parties to run with the land; and (4) the successor to the burden has notice. The covenants at issue did not appear to satisfy the "touch and concern" prong since the covenant must (a) burden the promisor's legal interest in the land to touch and concern that land, and (b) it must still affect the owner's interest in the property or its use. Here, Debtor did not reserve any interest for Gas Gatherer nor Holding Company, rather they simply engaged in certain services. The Court's conclusion that the covenants at issue did not run with the land is non-binding, but the Court granted the motion finding that Debtor's decision to reject each of the Gathering and Processing

Agreements to be reasonable exercise of business judgment.

North Dakota

Kittleson v. Grynberg Petroleum Co., 2016 ND 44 (N.D. 2016).

Mineral Lessee appealed from a lower court decision that interpreted a no-deductions clause, calculated damages for breach of that clause, and applied a ten-year statute of limitations to the action to recover by Mineral Lessor. The North Dakota Supreme Court affirmed the lower court's decision. The royalty clause called for payment to Lessor of "the market value at the well for all gas . . . produced from the leased premises . . .; provided however, that there shall be no deductions [for post-production costs]." While the "at the well" language allows deduction of reasonable post-production costs from the sales price received, the more specific "no deductions language qualifies and prevails over [the at the well clause]." The court applied a ten-year statute of limitations and awarded Lessor damages of approximately $17,240 for improper royalty deductions from 1997 to 2009, plus interest, attorney's fees, and costs. Lessor was found not to have severed the gas from his property before it was sold and therefore was not a "seller" under the Uniform Commercial Code. Thus, the ten-year statute of limitations was appropriately applied due to its governance of instruments affecting title to real property.

Texas

Spartan Texas Capital Partners, Ltd. v. Perryman, No. 14–14–00873–CV, 2016 WL 796073 (Tex. App. Mar. 1, 2016).

Mineral Owners brought suit against Exploration Company, which then brought a third-party action against purported Royalty Interest Holders. Mineral Owners settled their disputes with Exploration Company out of court. Mineral Owners then claimed that Royalty Interest Holders failed to mention any prior conveyances of a one-half royalty interest in various deed conveyances, and thus were estopped from claiming a one-half royalty interest in the property. Mineral Owners further claimed that one of the Royalty Interest Holders, Perryman, failed to disclose an inherited interest in the subject property when he filed for bankruptcy. The lower court ruled in favor of Royalty Interest Holders, and Mineral Owners appealed the decision. The Appellate Court held that the Royalty Interest Holders conveyed their entire royalty interest and were estopped from claiming a royalty interest under the *Duhig* doctrine. Subsequently, the Appellate Court rejected Mineral Owner's judicial estoppel claim because Perryman had no motive for concealment during bankruptcy, and the failure to disclose his royalty interest occurred more than 25 years prior to the present suit. In addition, the Appellate Court concluded that Royalty Interest Holders are not barred from claiming a one-fourth royalty interest in the land inherited from their father's estate.

Burlington Resources Oil & Gas Co., LP v. Petromax Operating Co., No. 06-15-00044-CV, 2016 WL 908228 (Tex. App. Mar. 10, 2016).

In 1975, predecessors of Purported Interest Holder entered into an agreement by which they would receive a 25% interest in nine existing leasehold areas. The agreement provided that the if either company were to acquire land within an Area of Mutual Interest (AMI), then the same offer should be made such that Purported Interest Holder would receive a 25% share in the lease and the other company a 75% share in the lease. In 1978, Purported Interest Holder entered into a farmout agreement with Operators' predecessor for portions of the leases after oil and gas were found within the land. In 1994, Purported Interest Holder entered into an assignment and bill of sale for its remaining interest in most of its leases, including the one in question. In 2007, an examination of title search performed by Operators found that Purported Interest Holder still retained an interest in the land. In the years between 2007 and 2012, Operators offered Purported Interest Holder an opportunity to participate in joint ventures on the properties, in which Purported Interest Holder did occasionally participate. In 2012, an examination of title determined that Purported Interest Holder did not own any interest in lease in question, and therefore was sent a reimbursement check for expenses it had incurred in drilling the most recent well. Purported Interest Holder filed suit stating that it still owned a mineral interest underlying the property, based on the 1994 agreement. The lower court granted summary judgment in favor of the Defendant, stating that the 1994 agreement was unambiguous and that Purported Interest Holder had sold all its interest in the lease in question. On appeal, the Appellate Court agreed with the lower court's reasoning and affirmed the decision.

Oncor Electric Delivery Company LLC v. Chaparral Energy, L.L.C., Util. L. Rep. P 27, 334 (Tex. App. 2016).

Alleging that an electric utility company breached a contract regarding the extension and construction of equipment necessary to provide electricity to two oil wells, an independent oil and gas production company filed suit for damages and attorney's fees. The district court entered judgment on a jury verdict in favor of the oil and gas production company. On appeal, the utility company argued that the breach was one of implied warranty. The Court of Appeals was not persuaded by this argument, noting that the utility company failed to object to this issue at trial. The Court of Appeals held that the terms of the agreement and the more specifically worded tariff were where the breach occurred. Further, the court held that the damages awarded to the oil and gas production company did not violate the tariff's limitation of liability since there can be no interruption of services—one of the limiting events—when there has been no working electricity established.

Federal

United States Court of Federal Claims

Pioneer Reserve, LLC v. United States, 125 Fed. Cl. 112 (2016).

Corporation formed for the express purpose of preserving a wetlands habitat filed suit against the United States, claiming the United States' Army Corps of Engineers breached an Umbrella Mitigation Banking Instrument (UMBI). The instrument was intended to be purchasable by third parties to function as credits that would offset environmental damage committed by the third-party. Corporation filed a motion for summary judgment for the UMBI to be considered a legally binding contract. Furthermore, Corporation claimed the Army Corps unilaterally amended the number of credits involved in the UMBI and failed to properly reimburse Corporation for the credits. The United States also filed a motion for summary judgment, alleging that the credits were purely speculative in nature and no damages were actually incurred. The United States Court of Federal Claims determined that a contract existed, but that questions of fact remained to determine if Corporation consented to the amendments and whether it suffered any damages. Because questions of material fact remained, the Court refused to grant summary judgment.

State

California

Monterey Peninsula Water Management Dist. v. Public Utilities Com., 364 P.3d 404 (Cal. 2016).

A regional California water district (District) assessed an extra fee on a public water utility company's (Company) customers to help fund an environmental impact mitigation program. The extra fee was included in the Company's customer bills. The Commission, a regulatory agency with legislative authority to regulate rates of public utility companies, denied the Company's request to maintain the fee system in place, questioning the system's cost-effectiveness. The District requested a writ of review from the California Supreme Court. The Commission argued that the fees in question should be viewed as a surcharge by the Company, rather than a government fee, thus allowing it to regulate the fee. The Court found that the Commission had no legislative authority to regulate fees set by state agencies, including the District. Because the fee ultimately originated with the District, the Court set aside the Commission's decision, remanding it for rehearing.

Newhall County Water District v. Castaic Lake Water Agency, 197 Cal. Rptr. 3d 429 (Cal. Ct. App. 2016)

A county water district and purveyor (District), brought suit for writ of mandate against a state water agency (Agency), challenging its new rate structure for water provided to the districts. The District claimed that the new rates, assessed based on the districts' total water use rather than the volume of water imported, violated state laws, including California State Proposition 26, requiring such rates to be proportionate to burdens and benefits of the service and related to reasonable costs of providing the service. The lower court granted the mandate, and the Agency appealed. The California Court of Appeals for the 2nd District affirmed the lower court's judgment. The Court held that the Agency's fees were not proportionate or reasonable because it was charging for services (non-imported groundwater) it did not provide, as well as groundwater planning activities that benefitted the region as a whole, not purely the districts affected by increased rates.

Idaho

Rangen, Inc. v. Idaho Dept. of Water Resources, No. 42772, 2016 WL 768152 (Idaho Feb. 29, 2016).

A Fish Hatchery Operator (Operator) contended that Junior Water Rights Holders (Rights Holders) were infringing on its ground water supply. Operator sought for the Director of the Idaho Department of Water Resources to impose limitations on the Rights Holder's pumping. In order to compensate for the lost water, Operator sought to pump water outside of its allotted ten-acre tract. However, the Director determined that the available water to all Rights Holders had gradually declined, and the Rights Holders were allocating their water without waste. On review, the Supreme Court of Idaho determined the Operator may only pump water from its designated tract, and the Rights Holders were permitted to continue pumping water. The Court also determined while the Operator asserted water rights to an entire spring, the Director was permitted to limit pumping from one mouth of the spring.

Federal

7th Circuit

DJL Farm LLC, et al. v. U.S. E.P.A., Nos. 15–2245, 15–2246, 15–2247, 15–2248, 2016 WL 716185 (7th Cir. Feb. 23, 2016)

Emission Mitigation Company (Company) applied for and was granted four permits by the EPA to construct and operate underground injection control wells. Company was to inject carbon dioxide into deep subsurface rock formations for storage designed to reduce carbon dioxide emissions while attempting to mitigate climate change. Farm, along with other landowners, challenged the permits and filed petitions for review with the EPA, which were denied by the Board. Upon denial by the Board, this Circuit began review. Because Company failed to obtain an extension from the EPA, both Company and the EPA moved to vacate oral arguments and dismiss the petitions for review as moot. The Circuit Court held that the issue was moot, because the permits were expired as of February 2, 2016, due to suspension of funding resulting from lack of progress in construction. The Circuit Court held that because the expired permits cannot be transferred, reissued, or used as a basis for issuing new permits in the same locations, both Company and the EPA have met the burden that the allegedly wrongful behavior could be reasonably expected to occur.

9th Circuit

Alaska Oil & Gas Ass'n. v. Jewell, Nos. 13–35619, 13–35666, 13–35662, 13–35667, 13–35669, 2016 WL 766855 (9th Cir. 2016).

U.S. Fish & Wildlife Service (FWS) listed polar bears as threatened under the Endangered Species Act (ESA), and in accordance with the ESA, FWS designated habitat critical to the conservation of polar bears. Oil and Gas Trade Associations, several Alaska Native Corporations, and the State of Alaska (collectively, Interested Parties), brought suit against the FWS, challenging the habitat designation under the ESA and the Administrative Procedure Act (APA). Interested Parties claimed that the habitat designation was unjustifiably large, and that FWS failed to follow ESA procedure. The lower court granted summary judgment in favor of the Interested Parties. On appeal, the Ninth Circuit reversed the decision. The Circuit Court held that the standard that FWS followed in making the designation—looking to areas that contained constituent elements required for sustained preservation of polar bears—was in accordance with the statutory purpose. Additionally, the FWS designation was not arbitrary and capricious because the designation contained areas required protection for both birthing and acclimation of bear cubs, and the FWS provided explanation for its treatment of areas of known human habitation. Lastly, the Court stated that the plain text of the ESA indicates that consultation with the state is discretionary, not mandatory.

Arizona ex rel. Darwin v. U.S. E.P.A., 81 ERC 2225 (9th Cir. 2016).

The EPA implemented a Final Rule, which partially disapproved of Arizona's Clean Air Act regional haze State Implementation Plan (SIP) submission and instead led EPA to promulgate a Federal Implementation Plan (FIP) in response. The EPA concluded that Arizona's best available retrofit technology (BART) determinations were deficient in three particular respects. First, EPA determined that Arizona's control cost calculations were not performed in accordance with the Guidelines and were otherwise unreasonable. Second, that Arizona did not evaluate the visibility improvements to all Class I areas in the proper fashion, as required by EPA. Lastly, Arizona inadequately explained its consideration of the BART factors. As a result, EPA disapproved of Arizona's BART determinations and promulgated an FIP with replacement determinations of nitrogen oxide limits. The Ninth Circuit held that the arbitrary and capricious standard applied to EPA's determinations, and that EPA did not act arbitrarily or capriciously when EPA determined Arizona's lack of compliance and implemented an FIP.

Klamath-Siskiyou Wildlands Center. v. Gerritsma, No. 13-35811, 2016 WL 775297 (9th Cir. Feb. 29, 2016).

Wildland Centers brought suit against the United States Bureau of Land Management and field manager in his official capacity (collectively, BLM) under the Administrative Procedure Act alleging that the BLM violated the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA) in its approval of a logging project (Project). Wildland Centers argued the BLM's Environmental Assessment (EA) of the project failed to sufficiently comply with NEPA in its consideration of the impact the Project would have on the environment. Specifically, the Wildland Centers argued that the EA was insufficient for two reasons.

First, the BLM failed to state the exact number and location of all infected trees to be removed. Second, the BLM failed to fully consider the environmental impact that may occur due to unauthorized off-highway vehicle use facilitated by the Project's requirement for new roads. Additionally, Wildland Centers argued the BLM failed to adhere to its FLPMA required land use plan by failing to comply with the plan's prohibition on a decrease in soil productivity and a requirement for the preservation of fragile soils. These shortcomings were argued to render the BLM's actions arbitrary and capricious. The lower court ruled in favor of the BLM on all claims. The Ninth Circuit affirmed the lower court's decision. In determining that the EA sufficient under NEPA, the Ninth Circuit deferred to the BLM's environmental impact estimate and its decision not to prepare an Environmental Impact Statement. Similarly, the court dismissed both FLPMA claims by giving deference to the BLM's land use plan which, according to the court, did contemplate some decrease in soil productivity and carefully considered—but did not definitively identify—the presence of fragile soil.

State

Alabama

Gulf Restoration Network v. Jewell, No. 15-00191-CB-C, 2016 WL 617461 (S.D. Ala. Feb. 16, 2016).

A non-profit, environmental organization (Plaintiff) filed suit against federal and state appointed Trustees who were designated to develop a plan to restore the natural habitat following the Deepwater Horizon oil spill in the Gulf of Mexico. Plaintiff challenged the agencies' plan to use a portion of funds dedicated for early restoration of natural resources to partially fund a lodge and conference center in Alabama's Gulf State Park. The District Court held that while the Trustees failed to consider reasonable alternatives to the proposed lease project, they did not act arbitrarily and capriciously in conducting their environmental impact statement pursuant to the Administrative Procedure Act. Further, the project did not violate the National Environmental Protection Act (NEPA) because only direct, not indirect effects of the proposed action must be studied. However, the court did decide to enjoin use of early restoration funds by the Trustees pending further NEPA review.

Indiana

Bonnell v. Cotner, No. 66503-1509-PL-530, 2016 WL 614107 (Ind. Feb. 16, 2016).

Landowners filed suit to quiet title for land, asserting ownership of the disputed land by adverse possession. The State sold the land on two separate occasions by tax sales. The Supreme Court found that despite the landowners satisfying the four common law requirements for adverse possession—control, intent, notice, and duration—the landowners had not perfected their adverse possession claim because they had not paid property taxes on the disputed land. Due to Indiana Tax Deed Statutes mandating that the sale of any property by tax deeds severs all prior claims of ownership, including ownership by adverse possession, the Court held that the landowners were divested of any interest in the disputed land. Thus, the tax sales of the disputed land defeated the landowners' ownership claim by adverse possession.

Montana

Montana Environmental Information Center v. Montana Dept. of Environmental Quality, 2016 MT 9 (Mont. 2016).

State Environmental Information Center (Center) filed suit challenging the Department of Environmental Quality's (DEQ) decision to approve the expansion of a gold mine to include a smaller nearby pit. Center argued that the DEQ's plan to reclaim the nearby pit violated the Montana constitution because it did not require the expanding company to completely backfill the pit after closure. Center also contended that the DEQ's decision to select the particular reclamation plan was arbitrary and capricious because the criteria set forth in the Montana Metal Mine Reclamation Act (MMRA) were not satisfied. The DEQ contended that Center was estopped from litigating its constitutional argument since the exact issue had been litigated in a prior proceeding, with Center obtaining an adverse judgment. The DEQ also maintained its reclamation plan was in compliance with MMRA requirements. The lower court ruled in favor of the DEQ. On appeal, the Supreme Court of Montana affirmed the lower court's decision. The Court held that the Center was barred by issue preclusion from re-litigating its constitutional claim on the grounds that, while couched in different language, the constitutional standard it advocated in the present case was indistinguishable from the argumentative standard put forth in prior litigation. Moreover, the Court found no meaningful, legally significant difference between the issue in the present litigation and the factually similar issue in the previous case. Thus, the Court reaffirmed that the Montana constitution does not require land disturbed by the taking of natural resources to be fully reclaimed to its previous condition and held that the MMRA is constitutional. Additionally, the Court held

the DEQ's reclamation plan was not arbitrary or capricious under the MMRA and was supported by substantial evidence.

Utah

Q-2 L.L.C. v. Hughes, 2016 UT 8 (Utah 2016).

Landowners collectively brought a quiet title action against Neighbor under the theory of boundary by acquiescence. Neighbor counterclaimed for adverse possession of the disputed land. On review, the Supreme Court of Utah addressed: (1) how and when a party acquires title under the doctrine of boundary by acquiescence; and (2) whether title transfers by operation of law at the time elements of boundary by acquiescence are met or by judicial decree at the time the trial court enters its order. On the first issue, the Supreme Court reaffirmed and clarified the rule that title under the doctrine of boundary by acquiescence transfers by operation of law, not by judicial order. On the second issue, the Court held that the boundary by acquiescence doctrine grants title by operation when its elements are met, and judicial adjudication of a boundary dispute does not confer title but merely determines the point at which title is vested.

Virginia

Wetlands America Trust, Inc. v. White Cloud Nine Ventures, L.P., 782 S.E.2d 131 (Va. 2016).

Trust held a conservation easement and sought a declaratory judgment against Property Owner for allegedly violating the easement's restrictive covenants. Trust asserted that Property Owner's construction activities and intended commercial use of new facilities on the property violated the conservation easement. The trial court entered judgment in favor of Property Owner. Trust appealed. The Supreme Court of Virginia held that the farm construction was permitted on the property, that the grading of site for a parking area did not violate terms of the easement, and that prior written approval from the Trust was not needed. Also, because Property Owner's construction and use of new facilities did not significantly interfere with easement's conservation values or environment, the Supreme Court affirmed the lower court's judgment.

Benjamin Harris, *What the Supreme Court's Stay of the Clean Power Plan Means for the EPA' Greenhouse Gas Regulation Moving Forward*, 2/15/2016 Geo. Envtl. L. Rev. Online 1.

Darci Stanger, *Canadian Oil: Maybe Not the Villain It's Been Made Out to Be*, 1/11/2016 Geo. Envtl. L. Rev. Online 1.