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Recent Case Decisions

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RECENT CASE DECISIONS

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State

Colorado

Combs v. Jaguar Energy Serv., LLC, No. 1:15-cv-00815-REB-NYW, 2016 WL 2931607 (D. Colo. May 17, 2016).

Oil field workers brought a putative class action against an employer, claiming the employer failed to pay proper overtime under the Colorado Wage Act ("CWA"). The district court granted the employer's motion for summary judgment, finding that the oil field workers "were exempt from the CWA's overtime pay requirement under exemption for interstate drivers, driver helpers, and loaders of motor carriers."

Louisiana

Square Mile Energy, LLC v. Pommier, 2015-807 (La. App. 3 Cir. June 1, 2016).

A husband inherited mineral rights as a co-owner with his siblings. Prior to divorce, the husband and wife signed an agreement with an operator to partition their community property. Following their divorce, the operator brought a concursus proceeding to determine mineral ownership of that tract. A clause in the agreement stated, "Included in this transfer are any and all mineral rights, when available, to [wife] and all surface rights." The husband and wife disagreed on whether that transfer included minerals the husband inherited with his siblings. The trial court ruled that the phrase "when available" rendered the clause ambiguous and then determined that the partition agreement did not intend to convey the inherited minerals. The appellate court affirmed despite the clause's lack of express reservation of the minerals: the minerals were not "available" at the time the husband signed the partition agreement because he "was a co-owner in indivision of a mineral servitude with his siblings."

Massachusetts

Melrose Fish & Game Club, Inc. v. Tenn. Gas Pipeline Co., LLC, 89 Mass. App. Ct. 594 (2016).

A hunting and fishing club filed suit against a gas pipeline company alleging the company interfered with its easement. The trial court granted the company's motion for summary judgment. The club appealed. The Court of Appeals found that the club possessed an easement by estoppel. The Court did not agree with the company's claim that paving a portion of the easement frustrated its purpose. Thus, the trial court erred by granting summary judgment, and the Court remanded the case.

Missouri

Lake Ozark-Osage Beach Joint Sewer Bd. v. Missouri Dep't of Nat. Res., Land Reclamation Comm'n & Magruder Limestone Co., No. WD 78869, 2016 WL 3268221 (Mo. Ct. App. June 14, 2016).

Missouri's land commission granted a permit to mine about 700 feet from a city sewage treatment plant. The plant appealed, alleging the commission failed to accept all the recommended conditions, modified a condition without publishing a fact-finding report, and helped the mining company meet its burden of proof to gain a permit. The court held that the commission has the power to make decisions about conditions and therefore is not required to accept all or any of the recommended conditions. Additionally, the court determined the fact-finding report was not required because the referenced provision became effective after the commission's decision was final: the commission's published minutes explained its reasoning for changing the wording (but not the content) of the modified condition. Finally, the court used the *Saxony* decision to determine that the commission may apply reasonable conditions that better allowed a company to meet its burden of proof and gain permit approval. The court upheld the mining company's permit.

North Dakota

Holverson v. Lundberg, 879 N.W.2d 718 (N.D. 2016).

A trust had agreed to sale property; after some payment, the trust released five acres to the grantee but held a mortgage on the land until the grantee paid the remainder. The mortgagee could not repay the mortgage by the maturity date, so the trust gave a notice of default and allowed the mortgagee six months the cure the default. When the mortgagee tendered his last payment, the trust declined it because it was past the initial maturity date. The mortgagee filed a quiet title action, and the trust counterclaimed with fraud and breach of contract because the mortgagee had taken multiple mortgages on that property and had satisfied many of those. The lower court granted summary judgment to the mortgagee and found that, since the trust had

accepted late payments for more than thirty years, the trust had waived the "time is of the essence" clause. The trust appealed. The Supreme Court of North Dakota affirmed; by amending the mortgage to grant a six-month curative extension, the trustee was charged as a matter of law with constructive notice of the county's property records for that tract, which included the other mortgages, some of which were satisfied at the time. Although the mortgagee continued to make sporadic payment to the trust, the trust's counterclaims of fraudulent misrepresentation accrued starting with the trustee's notice of the property records. Therefore, the statute of limitations barred these counterclaims.

Texas

Adams v. Murphy Expl. & Prod. Co.-USA, No. 04-15-00118-CV, 2016 WL 3342353 (Tex. App. June 15, 2016).

Lessors filed a breach of contract claim against a producer for failing to drill an offset well according to the leases. The district court granted summary judgment for the producer, and the lessor appealed. The parties disagreed about whether the well drilled was an offset well per the terms of the lease; legal standards dictate that operators should drill offset wells close enough to original wells to prevent drainage to the original well. The lease agreement, however, provided no maximum distance of an offset well from an original well. The lessors claim the well should be closer to the triggering well, but the producer alleged the well was drilled correctly based on the characteristics of the Eagle Ford Basin. The distance between the offset well and the original well remains in dispute, so the court overturned the summary judgement and reversed and remanded the case to the determine the correct distance.

Escondido Res. II, LLC v. Justapor Ranch Co., L.C., 04-14-00905-CV, 2016 WL 2936411 (Tex. App. May 18, 2016).

An oil and gas lessor brought action against a lessee seeking damages for breach of contract, termination of the lease, trespass, and trespass to try title, alleging the lessee intentionally paid less royalty than agreed upon, and therefore, the lease had terminated. The Court of Appeals affirmed the breach of contract claim; the lessee did not comply with the true-up provision, which required the lessee to rectify any deficiency in payments by a certain date of each year. But the court held the lease's termination provision did not apply to a breach of contract. The court held for the lessee on the trespass and trespass to try title claims since those claims relied on the termination of the lease due to the breach of contract. Finally, the Court remanded a second breach of contract claim that the trial court never addressed because the trial court had held the lease had terminated by that point.

Unocal Pipeline Co. v. BP Pipelines (Alaska) Inc., No. 01-15-00266-CV, 2016 WL 2929095 (Tex. App. May 17, 2016).

A partner in the Trans-Alaska Pipeline System ("TAPS") gave notice of its withdrawal in TAPS, and the remaining partners wanted to split the company's shares. The company insisted that taking those shares also meant the remaining partners would become responsible for the company's dismantlement, removal, and restoration ("DR&R") requirements of the TAPS federal right-of-way. The remaining partners disagreed. Additionally, the parties disagreed about whether the company would have to pay the remaining operators if the net salvage value ("NSV") was negative. The lower court ruled that the company remained liable for its DR&R obligations and that the company's NSV claim was not ripe because the parties could not agree on the calculation of the NSV. The appellate court reversed and remanded: although the TAPS agreement did not name or even include the right-of-way, the nature of TAPS requires any party desiring to exit the TAPS agreement to transfer interest in "all fee titles, easements, leases, permits, rights-of-way, [etc.]" Because the right-of-way is required for TAPS to continue efficient operation, that interest must transfer with the stock. The right-of-way does not conflict with the TAPS agreement as it only requires transferees to demonstrate their ability to perform the transferring party's obligations that may arise after the company discontinues operations. Finally, the court held that the company's "shall pay" claim was ripe; the court remanded the case for the lower court to interpret the clause, but the determination of the NSV would be left to arbitration, per the TAPS agreement.

Federal

9th Circuit

Idaho Conservation League v. Bonneville Power Admin., 12-70338, 2016 WL 3430538 (9th Cir. June 21, 2016).

The Army Corps of Engineers and a power administration ("agencies") jointly operated a dam. The agencies wanted to change the method of operating the dam and performed an environmental assessment to determine whether the agencies could release the dam and alter the lake level in the winter. The National Environmental Policy Act ("NEPA") requires agencies to create an environmental impact statement ("EIS") that examines environmental consequences of "major" federal action. An environmental group argued that the agencies did not create an EIS, thereby violating NEPA. The Court of Appeals determined the agencies did not violate NEPA because the slight manipulation of the dam level did not constitute major federal action.

State

California

Ctr. for Biological Diversity v. Cty. of San Bernardino, 247 Cal. App. 4th 326, 201 Cal. Rptr. 3d 898 (2016).

A water district performed an environmental impact report ("EIR") for a proposal to pump groundwater from an underground aquifer in the Mojave Desert then approved that proposal. Various conservation agencies challenged the approval, arguing that plan involved inefficient pumping because some water pumped from the aquifer would evaporate and that the EIR's stipulations on extending the timeline of the pumping were too abstract for approval. The Court of Appeals affirmed the water district's decision because, despite evaporation, water would be conserved in other methods, and because any future extension of the timeline of the program would require a separate EIR.

Del. Tetra Techs., Inc. v. Cty. of San Bernardino, 247 Cal. App. 4th 352, 355-56, 202 Cal. Rptr. 3d 145 (2016).

A salt mining company petitioned for a writ of mandate against the county for approving a memorandum of understanding ("MOA") without performing a necessary environmental impact report ("EIR"). According to the California Environmental Quality Act, any project requires an EIR before approval, and the company believed the MOA to be a project because it discussed a plan to pump between 50,000 to 75,000 acre-feet of water every year from an underground aquifer to sell to other municipalities. The run-off from the aquifer currently goes to dry lakes where the water becomes highly salinated and then evaporates. The company currently mines the dry lakes and believes the plan will minimize runoff and thus harm its mining capabilities. The court approved the lower court's finding that the MOA is not a project itself, as it establishes a process for plan completion and approval, which does not commit the county to any further action. Because the MOA is not a project, it does not require an EIR; therefore, the court upheld the denial of a writ of mandate.

Colorado

Upper Eagle Reg'l Water Auth. v. Wolfe, 2016 CO 42, 371 P.3d 681.

A water authority diverted water from a river for beneficial use. No other claims on the river existed. The water authority then allocated a portion of the initial diversion to a junior water rights holder with conditional use and filed an application to make the junior water rights holder's diversion absolute. Various engineers claimed that the water authority could not vest a junior water rights holder's conditional right as absolute when the authority simultaneously owned the senior water rights. The Supreme Court of Colorado held that when no waste, mischief, hoarding, or injury to other water users exists, an owner of water rights may choose which water rights it makes absolute and remanded the case to the water court to allow the senior rights holder to grant the junior water holders with absolute use.

Montana

Eldorado Coop Canal Co. v. Hoge, 2016 MT 145.

Due to the water court's ongoing adjudication of existing water rights in the Teton River Basin, the water court issued a temporary preliminary decree declaring certain appropriators subject to a new volume metric, amending a 100-year-old decree. Downstream water users (not subject to the earlier decree) informed the water commissioner that the prior appropriator was nearing that volume limitation and asked the commissioner to cap the use. The prior appropriator then filed a dissatisfied user complaint requesting to return to the earlier decree. The water

court denied that request, and this appeal followed. The Supreme Court of Montana affirmed the decision, finding that the "district court had correctly instructed the water commission to distribute owner's water rights pursuant to modified portion of temporary preliminary decree" and that the decree did not violate the water rights owner's right to due process.

Oklahoma

Logan Cty. Conservation Dist. v. Pleasant Oaks Homeowners Ass'n, 2016 OK 65.

A water conservation district filed suit seeking a declaratory judgment allowing it to perform repairs and improvements to a floodwater retarding structure based on vested easement access. A homeowner's association, however, maintained that the repairs and improvements did not fall within the scope of the easements. Thus, the association alleged that the project would constitute a taking and require compensation to homeowners. Both parties filed motions for summary judgment, and the judge sustained the conservation district's motion. The association appealed. The Supreme Court of Oklahoma determined that the instruments that granted the easements authorized repairs and improvements and affirmed the trial court's judgment.

South Carolina

W. Anderson Water Dist. v. City of Anderson, No. 2014-002488, 2016 WL 3342245 (S.C. Ct. App. June 15, 2016).

A water district appealed the circuit court's decision to allow a city to provide water service to a site within the district's boundaries. The Court of Appeals found that the city's purchase and sale agreement included the district consenting to the city providing water to a site partially within the district's historical boundaries because the agreement named the site and did not distinguish between parts inside or outside those boundaries. Further, the district's board could make that agreement because it did not substantially compromise the district's primary function—it only delegated its duties to one site for a limited time. Even so, the water district's past board had given consent, and the Court held that the new board could take another vote to continue with that agreement.

Federal

8th Circuit

North Dakota v. Heydinger, No. 14-2156, 2016 WL 3343639 (8th Cir. June 15, 2016).

A Minnesota statute prohibited importing extraterritorial power from a new facility or entering a long-term purchase agreement "that would increase statewide power sector carbon dioxide emissions." Nonprofit cooperatives that provide rural and municipal electricity sued the State, claiming the statute violated the Commerce Clause. The district court held that the prohibitions were indeed "impermissible extraterritorial legislation" violating the dormant Commerce Clause. The cooperatives meet the necessary challenge of providing reliable and cost-effective power to rural communities across several states; to best meet the needs of each area, these cooperatives cannot plan for individual emissions regulations of each state but rather must plan for the overall emissions limits allowed in that facility. The Eighth Circuit affirmed because the State was regulating activity wholly outside Minnesota. If the State takes issue with out-of-state emissions, the Clean Air Act provides recourse through several mechanisms that do not violate the Commerce Clause.

Federal

11th Circuit

Cannon v. Sec'y, U.S. Dep't of Agric., No. 15-12325, 2016 WL 2849459 (11th Cir. 2016).

An agriculture lessee received subsidies through the United States Department of Agriculture ("USDA"). The Farm Service Agency determined the lessor did not own the entire farm. The USDA ordered the lessee to repay the subsidies received for the portion of land the lessor did not own. The lessee filed an Equal Credit Opportunity Act ("ECOA") claim against the USDA secretary, but the lower court dismissed the claim as time-barred. The lessee's claim accrued almost three years before he sued despite a two-year statute of limitations. The legislature extended the statute to five years, and the lessee filed suit again. An amended statute of limitations retroactively applies to a cause of action that accrued prior to, but was filed after, the amendment went into effect only when (1) the limitations statute is remedial or procedural in nature and not a substantive limitation on a statutory right or (2) the legislature clearly manifested an intent to have an amended limitations statute apply to existing causes of action. The Court held that (1) ECOA's limitation period was substantive rather than remedial or procedural since the limitation restricted a right of action created by a statute, and (2) Congress did not manifest an intent to have ECOA's amended statute apply to existing causes of action. Thus, the Court held ECOA's extended limitations period did not apply retroactively to lessee's claims.

State

Michigan

Lyle Schmidt Farms LLC v. Township of Mendon, Nos. 326609, 326611, 327909, 327916, 2016 WL 3263911 (Mich. Ct. App. June 14, 2016).

A purchaser filed suit against a township due to an ad valorem tax valuation dispute. The previous purchaser bought the properties from a bank then resold them without filing affidavits affirming the property's status as agricultural property, which caps the taxable value of the property. The purchasers protested the taxable values at local boards of review and the Michigan Tax Tribunal (MTT); in both instances, the reviewing bodies denied the protests. The purchasers filed an appeal consolidating the protested cases. The Court of Appeals held that the MTT did not err in only allowing current, and not former, agricultural owners to file an affidavit under Michigan law. Ultimately, the Court denied the request to recap parcels.

North Carolina

Myers v. Clodfelter, No. COA15-1307, 2016 WL 3156124 (N.C. Ct. App. June 7, 2016).

A homeowner and a field owner own adjacent properties and share a common road, which is the only access to and from the field owner's property. When the field owner put a commercial paintball field on his property, the homeowner dug a ditch across the road where it crossed into the field to prevent access. The field owner sued, claiming he, through his predecessors in title, had a perpetual prescriptive easement across the homeowner's property because of open, continuous, notorious, and hostile use of the path for over twenty years. The homeowner responded that the field owner bought his property from the homeowner's relatives, whose use of the land was not open or hostile. The court found that both the predecessor's and current field owner's history of open use and maintenance of the road showed evidence that both parties who had owned the field assumed the use of the road was a right—not a privilege—meaning the hostility had existed for over twenty years. Therefore, the court affirmed the lower court's ruling that the field owner had a prescriptive easement over the homeowner's property that the homeowner cannot block.

Utah

Anderson v. Fautin, 2016 UT 22.

A landowner brought a quiet title action against an adjoining landowner over ownership of a strip of land on the defendant's side of the fence—a fence that encroached onto the plaintiff's vacant lot. The plaintiff had failed to use or visit the vacant lot for twenty-six years. During that time, the defendant had used the land on the defendant's side of the fence for grazing livestock. The lower court granted summary judgment for the defendant. The Supreme Court of Utah affirmed, stating that the defendant did not need to prove occupancy on both sides of the fence for a claim of boundary by acquiescence if the defendant could show occupation up to the fence.

OIL AND GAS

Alexander McElroy, *Ohio's Dormant Mineral Act: Current and Unresolved Issues*, 44 Cap. U. L. Rev. 325 (2016).

Bret Wells, *Allocation Wells, Unauthorized Pooling, and the Lessor's Remedies*, 68 Baylor L. Rev. 1, 2 (2016).

Christopher S. Kulander & R. Jordan Shaw, *Comparing Subsurface Trespass Jurisprudence-Geophysical Surveying and Hydraulic Fracturing*, 46 N.M. L. Rev. 67 (2016).

Danielle Quinn, *A Fracking Fragile Issue: Courts Continue to Tiptoe Around Subsurface Trespass Claims*, 27 Vill. Envtl. L.J. 1 (2016).

Lindsay M. Nelson, *The Gulf Coast Pipeline: A Stealthy Step Toward the Completion of the Keystone Xl Pipeline Project*, 44 Cap. U. L. Rev. 429 (2016).

Taylor Talmage, *Bangor Gas: An Analysis of the Law Court's Decision in Office of the Public Advocate v. Public Utilities Commission*, 68 Me. L. Rev. 399, 400 (2016).

WATER

Nicholaus E. Johnson, *Chapter 255: Finding the Leaks in the Sustainable Groundwater Management Act*, 47 U. Pac. L. Rev 641, 642 (2016).

Stephen C. McCaffrey, *The Human Right to Water: A False Promise?*, 47 U. Pac. L. Rev 221 (2016).

Vanessa Casado Pérez, *All Dried Out: How Responses to Drought Make Droughts Worse*, 51 Tulsa L. Rev. 731 (2016).

WIND

David C. Magagna, *Congress, Give Renewable Energy A Fair Fight: Passage of the Master Limited Partnerships Parity Act Would Give Renewable Energy the Financial Footing Needed to Independently Succeed*, 27 Vill. Envtl. L.J. 149 (2016).

AGRICULTURE

Ciara Dineen, *Drought and California's Role in the Colorado River Compact*, 42 J. Legis. 211 (2016).

James L. Huffman, *Protecting the Great Lakes: The Allure and Limitations of the Public Trust Doctrine*, 93 U. Det. Mercy L. Rev. 239 (2016).

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