

Bond Case Briefs

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EMINENT DOMAIN - SOUTH CAROLINA

Jowers v. South Carolina Department of Health and Environmental Control

Supreme Court of South Carolina - July 19, 2017 - S.E.2d - 2017 WL 3045982

Owners of property along rivers and streams brought action against the Department of Health and Environmental Control (DHEC), claiming that the Surface Water Withdrawal, Permitting, Use, and Reporting Act's registration provisions were an unconstitutional taking of private property for private use, that the Act violated their due-process rights by depriving them of their property without notice or an opportunity to be heard, and that the Act violated the public-trust doctrine by disposing of assets that the state held in trust.

The Circuit Court granted summary judgment for DHEC on standing and ripeness grounds and also denied property owners' claims on the merits. Property owners appealed.

The Supreme Court of South Carolina held that:

- The Act did not deprive property owners of their common-law riparian rights; and
- The public-importance exception to the requirement of standing did not apply to property owners' claims.

Surface Water Withdrawal, Permitting, Use, and Reporting Act did not deprive owners of property along rivers and streams of their common-law riparian rights, and thus owners did not suffer an injury-in-fact required to establish standing in their action against Department of Health and Environmental Control (DHEC) that challenged Act's registration provisions regarding use of surface water by registered agricultural users as an unconstitutional taking under the state constitution and as a deprivation of owners' due-process rights. Owners could still challenge an agricultural use as unreasonable, owners were still entitled to injunctive relief when they proved the required elements, and owners could still bring a private cause of action for damages against registered agricultural users.

The public-importance exception to the requirement for standing did not apply in action by owners of property along rivers and streams against the Department of Health and Environmental Control (DHEC) that challenged the Surface Water Withdrawal, Permitting, Use, and Reporting Act's registration system regarding the use of surface water by registered agricultural users as an unconstitutional taking under the state constitution and as a deprivation of owners' due-process rights; there was no need for future guidance.