

Bond Case Briefs

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UTILITIES - MONTANA

Gateway Village, LLC v. Montana Dept. of Environmental Quality

Supreme Court of Montana - September 29, 2015 - P.3d - 2015 WL 5714594 - 2015 MT 285

Real property owner petitioned for judicial review of decision of Department of Environmental Quality (DEQ) to grant wastewater discharge permit to county water and sewer district, and also alleged that discharge of wastewater into groundwater extending under owner's surface property constituted trespass. The District Court determined further environmental analysis was necessary, did not grant summary judgment to district on trespass claim, declined to entertain district's claim that it held a prescriptive easement, and denied owner's claim for attorneys' fees. District and DEQ appealed, and owner cross appealed.

The Supreme Court of Montana held that:

- The District Court should have declined to address trespass issue, and
- The District Court did not abuse its discretion in denying request for attorneys' fees.

Issue of whether discharge of wastewater into groundwater extending under owner's surface property constituted a trespass was not a justiciable controversy divisible from district court's remand of case for preparation of environmental impact statement regarding county water and sewer district's entitlement to discharge permit, and therefore district court should have declined to address issue. Preparation of statement would have resulted in substantial changes and additions to administrative record, and it was speculative whether district was entitled to discharge permit and whether trespass claim would have been reasserted.

District court did not abuse its discretion in denying real property owner's request for attorneys' fees under private attorney general doctrine in its petition for judicial review of decision of Department of Environmental Quality (DEQ) to grant wastewater discharge permit to county water and sewer district. Eown-gradient land owners were a relatively narrow class of persons, private attorney general doctrine has been invoked only sparingly, and DEQ neither mounted a frivolous defense nor acted in bad faith.