

Bond Case Briefs

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EMINENT DOMAIN - NORTH DAKOTA

In re 2015 Application for Permit to Enter Land for Surveys and Examination

Supreme Court of North Dakota - August 18, 2016 - N.W.2d - 2016 WL 4395434 - 2016 ND 165

County water resource district filed applications for permission to enter landowners' properties to conduct surveys, mapping, and examinations in connection with a proposed flood control project.

The District Court granted applications. Landowners appealed, and the appeals were consolidated.

The Supreme Court of North Dakota held that:

- Trial court had subject matter jurisdiction over district's applications, and
- Statute allowing district to "enter upon the land and make examinations, surveys, and maps thereof" entitled district to perform soil borings.

Trial court had subject matter jurisdiction over county water resource district's applications for permission to enter landowners' properties to conduct surveys, mapping, and examinations required for evaluating and designing a proposed flood control project, even though district did not serve eminent domain summonses and complaints on landowners. Proceedings on district's applications were special statutory proceedings exempt from the rules of civil procedure, and such proceedings were preliminary to condemnation proceedings, rather than being condemnation proceedings requiring eminent domain summonses and complaints.

Eminent domain statute authorizing a preliminary proceeding in which the condemning authority may "enter upon the land and make examinations, surveys, and maps thereof" entitled county water resource district to perform soil borings on land in connection with a proposed flood control project, and thus such soil borings did not themselves constitute a compensable taking. Proposed soil borings constituted "examinations" under the statute and were minimally invasive, as district was forbidden to enter or damage buildings or cut trees without the landowners' permission, and was required to restore the affected property to its original condition as nearly as practicable.