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EMINENT DOMAIN - UNITED STATES

United Affiliates Corporation v. United States

United States Court of Federal Claims - May 29, 2019 - Fed.Cl. - 2019 WL 2276703

Landowner and mineral rights lessee brought action against Government, asserting categorical and regulatory takings claims following Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed certain mining-generated waste disposal operations.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that:

- Lessee adequately alleged that it possessed cognizable property interest;
- Landowner adequately alleged that it possessed cognizable property interest;
- Lessee and landowner failed to state claim for categorical taking by failing to allege physical invasion of property or that property had been deprived of all economically beneficial or productive use; but
- Lessee and landowner adequately alleged regulatory taking.

Lessee of property's mineral rights adequately alleged property interest cognizable for Fifth Amendment takings claim against Government based upon Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed waste generated from mining leased property to be disposed of in neighboring hollows through which streams ran; lessee alleged that it and property owner had entered into lease agreement that covered mining of property and that, thereafter, lessee had applied to EPA for permit to dispose of waste in hollows, with submission of such application having required lessee to affirm its ownership interest in hollows.

Property owner adequately alleged property interest cognizable for Fifth Amendment takings claim against Government based upon Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed waste generated from mining property to be disposed of in neighboring hollows through which streams ran; owner alleged that it owned mined land and most of the coal that could be mined, that it was entitled to receive certain tonnage royalties from mineral rights lessee pursuant to lease agreement whereby it permitted lessee to mine land, and that, in applying to EPA for permit to dispose of waste in hollows, lessee had affirmed its ownership interest in hollows such that property owner had interest in hollows to extent it held royalty fee arrangement.

Landowner and mineral rights lessee adequately alleged taking, as element of regulatory Fifth Amendment takings claim against Government based upon Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed waste generated from mining property to be disposed of in neighboring hollows through which streams ran; landowner and lessee alleged that after EPA had issued permit to lessee, lessee had invested millions of dollars in developing property to carry out operations which permit had specifically authorized, only for EPA to, in unforeseeable act without precedent, withdraw permit, foreclosing use of land for mining and

resulting in deprivation of millions of dollars in economically beneficial or productive use of property.

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