



COALEX STATE INQUIRY REPORT - 333

July 1995

Interstate Mining Compact Commission
459-B Carlisle Drive
Herndon, Virginia 20170

TOPIC: TAKINGS (Update)

INQUIRY: Update of COALEX Reports, providing recent cases on a variety of "takings" related topics.

SEARCH RESULTS: Copies of COALEX Reports addressing the issue of "takings" are enclosed (without attachments). The COALEX Reports are updated by the cases listed below. Copies of the updated items are enclosed.

COALEX REPORTS

COALEX STATE INQUIRY REPORT - 106, "Constitutionality of the 300 foot waiver requirements" (1989).

COALEX STATE INQUIRY REPORT - 139, "Valid existing rights (VER)" (1990).

COALEX STATE INQUIRY REPORT - 189, "Subsidence and public land use; takings" (1991).

COALEX STATE INQUIRY REPORT - 210, "Definition of or test for "valid existing rights" (1992).

COALEX STATE INQUIRY REPORT - 213, "Lands unsuitable; valid existing rights; takings" (1992).

COALEX STATE INQUIRY REPORT - 332, "Valid existing rights (Update)" (1995).

ANNOTATIONS

ANNOTATION, "When is taking of property for 'public use' so as to be permissible under federal constitution if just compensation is provided -- Supreme Court cases", 81 L Ed 2d 931 (1995).



ANNOTATION, "Supreme Court's view as to what constitutes 'taking', within meaning of fifth amendment's prohibition against taking of private property for public use without just compensation", 89 L Ed 2d 977 (1995).

ANNOTATION, "Supreme Court's views as to what constitutes 'private property' within meaning of prohibition, under federal constitution's fifth amendment, against taking of private property for public use without just compensation", 91 L Ed 2d 582 (1995).

STATE CASES

IOWA COAL MINING CO., INC. v MONROE CTY., 494 N.W. 2d 664 (Iowa 1993).

"This case concerns a coal company's attempt to increase its profitability by merging its strip mining operation with a solid waste landfill. The company's zeal in pursuing the venture was exceeded only by the county's speed in enacting a zoning ordinance to restrict it."

...

"[W]e do not believe that the [zoning] ordinance's projected impact on Iowa Coal's profitability outweighs the county's undisputed right to reasonably regulate land use within the county."

...

"In summary, we conclude that Monroe county has not substantially deprived Iowa Coal of its use and enjoyment of the Star 14 mine. Hence, we find no taking upon which to sustain Iowa Coal's claim of compensation."

NATURAL RESOURCES & ENVTL. PROTECTION CABINET v KENTUCKY HARLAN COAL CO., 870 S.W. 2d 421 (1993).

"We therefore are not persuaded that the challenged statutes and regulations, by prohibiting the unregulated disposal of earth materials separated from coal at appellee's coal washing facility, were unconstitutionally overbroad as having prohibited 'a substantial amount of constitutionally protected conduct.'"

...

"[T]he cabinet did not in any way attempt to deprive appellee of its ability to operate its coal washing plant, or to physically deprive appellee of either the coal processing waste or its rights in those materials. Instead, the disputed action was merely taken in regulation of 'the conditions under which such operations may be conducted,' *Hodel v Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 296, 101 S. Ct. 2352, 2370, 69 L. Ed. 2d 1 (1981)., and there is no indication either that the cabinet's action interfered with 'reasonable investment backed expectations,' *id.*, 452 U.S. at 295, 101 S. Ct. at 2352 (citation omitted), or that appellee availed itself of its right to seek alternative administrative relief. Accordingly, we are not persuaded that the circumstances leading to this action unconstitutionally denied appellee of the 'economically viable use of' its land, *Hodel*, 452 U.S. at 296, 101 S. Ct. at 2370 (citation



omitted), or constituted a 'taking' of property so as to entitle appellee to just compensation."

WARD v HARDING, 860 S.W. 2d 280 (Ky 1993).

Harding claimed that Section 19(2) of the Constitution of Kentucky, which declared that "coal extraction be only by the known methods in the area at the time the instruments were executed", constituted a 'taking' of private property without just compensation -- the amendment deprived "them of a property right by rendering it economically unfeasible to recover their minerals."

"At the outset, we have difficulty bringing this case within the ambit of 'takings' jurisprudence. The Constitutional Amendment here does not amount to a new regulation of land use restriction. It is simply the codification of a rule of contract construction designed to give effect to the original intention of the parties, a construction we believe to be entirely correct."

...

"The [Supreme] Court [in LUCAS v SOUTH CAROLINA COASTAL COUNCIL, below] recognized that regulatory action may diminish or eliminate economically productive uses of land providing it does not destroy all permissible uses under relevant property law principles.... As appellee's entitlement to remove their minerals in accordance with the instrument of acquisition has not been affected by Section 19(2) of the Constitution of Kentucky, there has been no violation of the Fifth and Fourteenth Amendments to the Constitution of the United States."

NATURAL RESOURCES COMMN. OF INDIANA v AMAX COAL CO., 638 NE 2d 418 (Ind 1994).

"Appellee B & LS next claims that by regulating its use of ground water as part of their strip mining operations, the DNR has effected an unconstitutional taking of their property rights in the ground water."

...

"The DNR action in this case looked to further the ends of I-SMCRA. This was a legitimate exercise of the statutory authority, authorized in I-SMCRA, to bring about actions that would protect nearby landowners from the harmful effects of surface coal mining, specifically the change in the hydrologic balance."

REDMAN v OHIO DEPT. OF INDUS. RELATIONS, 1994 Ohio App. LEXIS 3953 (Ohio Ct App 1994).

Redman contended that denial of his applications for permits to drill oil and gas wells was an unconstitutional regulatory taking of property for which he was entitled to compensation. The court found "the General Assembly's determination that a permit applicant's interest in drilling must be deferred until such time as an owner or lessee is



able to extract its coal reserves in the most safe, efficient and effective way possible substantially advances a legitimate state interest."

MACHIPONGO LAND & COAL CO. v COMMONWEALTH, 648 A 2d 767 (Pa 1994).
MACHIPONGO LAND & COAL CO. v COMMONWEALTH, 624 A 2d 742 (Pa Commw Ct 1993).

From footnote 8: "[T]he substance of a takings claim, not its form, determines the court with requisite jurisdiction... In form, this action was brought as a pre-enforcement challenge of an EQB regulation. In substance, though, it is the challenge of a regulatory taking by the designation of land as unsuitable for surface mining."

Also see:

GARDNER v COMMONWEALTH, 658 A 2d 440 (Pa Commw Ct 1995). [This is an update to a case in Report - 213.] Here, a property owner sought compensation for coal rights under land that was taken as part of a state park. As with MACHIPONGO, the case involved a "ripeness" issue.

FEDERAL CASES

OTTER CREEK COAL CO. v UNITED STATES, 231 Ct Cl 878 (Ct Cl 1982).

The plaintiff alleged a taking of its coal mining rights in a federal wilderness area "by operation" of SMCRA. The court affirmed the trial judge's order which included instructions "for further conduct of the case." Further conduct included OSM's ruling on the plaintiff's application to mine within the wilderness area.

LUCAS v SOUTH CAROLINA COASTAL COUNCIL, 112 S Ct 2886 (1992).

This regulatory takings case is described briefly in WARD v HARDING, above.

FLORIDA ROCK INDUS. v UNITED STATES, 18 F 3d 1560 (Fed Cir 1994).

A regulatory takings case involving Sec. 404 of the Clean Water Act.

LOVELADIES HARBOR, INC. v UNITED STATES, 28 F 3d 1171 (Fed Cir 1994).

A regulatory takings case involving Sec. 404 of the Clean Water Act.

M & J COAL CO. v UNITED STATES, 47 F 3d 1148 (Fed Cir 1995).

OSM, "acting pursuant to its authority under SMCRA, may regulate coal operations that are endangering the public health or safety without effecting a taking of property requiring the payment of just compensation under the Fifth Amendment."



WHITNEY BENS., INC. v UNITED STATES, 1995 U.S. App. LEXIS 11902 (Fed Cir 1995). WHITNEY BENS., INC. v UNITED STATES, 31 Fed Cl 116 (Ct Cl 1994).

These cases update items in Report - 189.

ATTACHMENTS

- A. COALEX STATE INQUIRY REPORT - 106, "Constitutionality of the 300 foot waiver requirements" (1989).
- B. COALEX STATE INQUIRY REPORT - 139, "Valid existing rights (VER)" (1990).
- C. COALEX STATE INQUIRY REPORT - 189, "Subsidence and public land use; takings" (1991).
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- J. IOWA COAL MINING CO., INC. v MONROE CTY., 494 N.W. 2d 664 (Iowa 1993).
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- L. WARD v HARDING, 860 S.W. 2d 280 (Ky 1993).
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- O. MACHIPONGO LAND & COAL CO. v COMMONWEALTH, 648 A 2d 767 (Pa 1994).
- P. MACHIPONGO LAND & COAL CO. v COMMONWEALTH, 624 A 2d 742 (Pa Commw Ct 1993).
- Q. GARDNER v COMMONWEALTH, 658 A 2d 440 (Pa Commw Ct 1995).
- R. OTTER CREEK COAL CO. v UNITED STATES, 231 Ct Cl 878 (Ct Cl 1982).
- S. LUCAS v SOUTH CAROLINA COASTAL COUNCIL, 112 S Ct 2886 (1992).
- T. FLORIDA ROCK INDUS. v UNITED STATES, 18 F 3d 1560 (Fed Cir 1994).



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U.S. Department of the Interior

- U. LOVELADIES HARBOR, INC. v UNITED STATES, 28 F 3d 1171 (Fed Cir 1994).
- V. M & J COAL CO. v UNITED STATES, 47 F 3d 1148 (Fed Cir 1995).
- W. WHITNEY BENS., INC. v UNITED STATES, 1995 U.S. App. LEXIS 11902 (Fed Cir 1995).
- X. WHITNEY BENS., INC. v UNITED STATES, 31 Fed Cl 116 (Ct Cl 1994).