COALEX STATE INQUIRY REPORT - 106
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TOPIC: CONSTITUTIONALITY OF THE 300 FOOT WAIVER REQUIREMENTS

INQUIRY: Locate any decisions testing the constitutionality of the 300 foot waiver requirement [mining is not permitted within 300 feet of an occupied dwelling, unless waived by the owner thereof]. The governing Virginia regulations are: Subchapter VF - Areas Unsuitable for Mining. In particular, Section 480-03-19.761.11(e) [30 C.F.R. 761.11(e); Section 522(e) of SMCRA].

SEARCH RESULTS: Research was performed using COALEX, and state and federal decisions in LEXIS. No relevant Office of Hearing and Appeal decisions were identified.

Two main issues are discussed in the state and federal cases identified:
1. Does the application of 522 (e) of SMCRA equal an unconstitutional taking of private property?
2. Must administrative remedies be exhausted before requesting judicial review?

A list of the state and federal cases identified as a result of the research and the issues they address follows. Complete copies of the three state and one U.S. Claims Court decisions are attached. Due to the length of the remaining six federal court decisions, only the relevant portion of the opinions are enclosed.

I. "TAKING" OF PRIVATE PROPERTY

Several state and federal court decisions were identified which question whether certain regulations effect an uncompensated taking of private property in violation of the just compensation clause of the Fifth Amendment.

In WILLOWBROOK MINING CO. v COMMONWEALTH OF PENNSYLVANIA, 499 A.2d 2 (1985), the Commonwealth Court of Pennsylvania determined that Willowbrook failed to prove that the statute prohibiting mining within 300 feet of an occupied dwelling was an unduly oppressive exercise of police power. The Pennsylvania Environmental Hearing Board's finding "that the statute did not result in an unconstitutional taking of Willowbrook's property" was affirmed.

The Supreme Court, in HODEL v VIRGINIA SURFACE MINING & RECLAMATION ASSOCIATION, 452 U.S. 264 (1981), would not rule on the constitutionality of SMCRA's steep-slope provisions and Sec. 522(e) because no "concrete controversy concerning either application of the Act to particular surface mining operations or its effect on specific parcels of land" was presented. The court did find that the "mere enactment" of the Act did not effect a taking of private property. In footnote 40, it added:

"[T]his holding does not preclude appellees or other coal mine operators from attempting to show that as applied to particular parcels of land, the Act and the Secretary's regulations effect a taking. Even then, such an alleged taking is not unconstitutional unless just compensation is unavailable."

HODEL v INDIANA, et al., 452 U.S. 314 (1981), discusses the same issues as HODEL v VIRGINIA, above, concentrating on the prime farmland provisions.

Legislative intent was considered by the U.S. Court of Appeals for the D.C. Circuit, in NATIONAL WILDLIFE FEDERATION v HODEL, 839 F.2d 694 (1988), when it ruled that the "continually-created valid existing right" regulation is a "reasonable interpretation of the Act". The court stated:

"Although [the legislative history] does not answer the specific question before us, it does suggest that Congress did not intend to infringe on valid property rights or effect takings through Sec. 522(e)."

II. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

The majority of the decisions identified decline to rule on the uncompensated takings and just compensation issues because of failure to pursue administrative relief prior to requesting judicial review. In HODEL v VIRGINIA, the Supreme Court held:

"[A]ppellees cannot at this juncture legitimately raise complaints in this Court about the manner in which the challenged provisions of the Act have been or will be applied in specific circumstances, or about their effect on particular coal mining operations. There is no indication in the record that appellees have availed themselves of the opportunities provided by the Act to obtain administrative relief by requesting either a variance from the approximate-original-contour requirement of Sec. 515 (d) or a waiver from the surface mining restrictions in Sec. 522 (e). If appellees were to seek administrative relief under these procedures, a mutually acceptable solution might well be reached with regard to individual properties, thereby obviating any need to address the constitutional questions. The potential for such administrative solutions confirms the conclusion that the taking issue decided by the District Court simply is not ripe for judicial resolution."

The HODEL v VIRGINIA decision was cited by the Supreme Court in WILLIAMSON COUNTY REGIONAL PLANNING COMMISSION v HAMILTON BANK OF JOHNSON CITY, 473 U.S. 172 (1985). The "taking" issues decided in this land development case are

identical to those discussed in the surface mining cases identified. In WILLIAMSON, the court held that Hamilton Bank, by not seeking variances which might have allowed the Bank to develop the property after its original development plan was rejected, "has not yet obtained a final decision regarding the application of the ordinance and regulations to its property, nor utilized the procedures Tennessee provides for obtaining just compensation...." As part of this holding, the court found the application of 42 U.S.C. Sec. 1983 "without merit":

"While there is no requirement that a plaintiff exhaust administrative remedies before bringing a Sec. 1983 action, the question whether administrative remedies must be exhausted is conceptually distinct from the question whether an administrative action must be final before it is judicially reviewable."

In BURLINGTON NORTHERN RAILROAD CO. v U.S., 752 F.2d 627 (1985), the U.S. Court of Appeals for the Federal Circuit cited HODEL V. VIRGINIA and determined that "Burlington's taking claim is premature" because "it has not exhausted its administrative remedies by seeking a permit [to conduct surface coal mining in Custer National forest] from the Secretary, we express no views on whether Burlington could bring such a suit if it ultimately were decided that the Secretary has no authority to authorize surface coal mining in Custer National Forest. If th[at] were to happen, Burlington might have a valid claim for the taking of its property. Indeed, the Claims Court so recognized when it dismissed the suit without prejudice."

Although the plaintiff in AINSLEY v U.S., 8 Cl. Ct. 394 (1985), provided specific circumstances in her "takings" allegation, namely that "two Acts passed by Congress...act in concert to prohibit her from mining coal on her land which is the only beneficial use for her coal property", the U.S. Claims Court, citing HODEL v VIRGINIA, concluded that the "plaintiff should initially seek an agency determination...." In the court's view, the "taking" issue could not be decided "without knowing the reaction of the Secretaries to a specific plan."

On the issue of administrative action versus judicial review, the Fifth District Court of the State of Illinois, in GINN v CONSOLIDATION COAL CO., 437 N.E.2d 793 (1982), took a view opposite to those stated above. Citing to subsection 1270(e) of SMCRA, the court determined that "[t]he exhaustion of administrative remedies is required in situations where a party seeks judicial review of an administrative action...In the case at bar, plaintiff does not ask for judicial review of any administrative action nor are we persuaded that he was required to seek relief through an administrative agency before seeking relief under the common law."

In SMITH v NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, 712 S.W.2d 951 (1986), the Court of Appeals of Kentucky determined that the execution of a waiver, to permit surface mining within 300 feet of his home, by a nonoccupant/co-owner of the dwelling is not sufficient to deprive the occupant/co-owner of "the protections to be afforded under the state and federal statutes".

ATTACHMENTS

A. WILLOWBROOK MINING CO. v COMMONWEALTH OF PENNSYLVANIA, 499 A.2d 2 (1985).
B. HODEL v VIRGINIA SURFACE MINING & RECLAMATION ASSOCIATION, 452 U.S. 264 (1981).
C. HODEL v INDIANA, et al., 452 U.S. 314 (1981).
D. NATIONAL WILDLIFE FEDERATION v HODEL, 839 F.2d 694 (1988).
E. WILLIAMSON COUNTY REGIONAL PLANNING COMMISSION v HAMILTON BANK OF JOHNSON CITY, 473 U.S. 172 (1985).
F. BURLINGTON NORTHERN RAILROAD CO. v U.S., 752 F.2d 627 (1985).
G. AINSLEY v U.S., 8 Cl. Ct. 394 (1985).
H. GINN v CONSOLIDATION COAL CO., 437 N.E.2d 793 (1982).
I. SMITH v NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, 712 S.W.2d 951 (1986).