2014 Animal and Natural Resource Law Case Review

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Transcript of Hearing, **Nonhuman Rights Project on behalf of Tommy v. Lavery**, N.Y. Sup. Ct. (2013) (No. 02051)

Summary of the Facts

The Nonhuman Rights Project (NhRP) filed a petition for a writ of *habeas corpus* on behalf of Tommy, a chimpanzee. Tommy, who is owned by defendant Patrick Lavery, lives in a cage outside of his owner's trailer, where he was given very little room to move, permitted no social access to other chimpanzees, and exposed to high temperatures. NhRP sought relief for Tommy under Article 70 of the New York Code, which provides "[a] person illegally imprisoned or otherwise restrained in his liberty within the state, ... may petition without notice for a writ of *habeas corpus* to inquire into the cause of such detention and for deliverance." The lawsuit, one of three filed by NhRP under similar circumstances, sought to have the legal status of all chimpanzees in New York changed to "legal person." Recognition as a legal person would instill basic rights upon the chimpanzees, basic rights such as bodily integrity and bodily liberty. The thrust of NhRP's argument centered heavily upon the legal distinction between "person" and "human-being." NhRP requested Tommy be classified as a legal person, and therefore entitled to relief under the *habeas corpus* statute. In its argument, NhRP offered numerous examples of other non-human entities being afforded legal rights, such as books, ships, and corporations. Furthermore, NhRP sought to distinguish the chimpanzee from other animals due to their cognitive sophistication and relative autonomy. NhRP also sought to establish personhood through the creation of a trust in which Tommy is a beneficiary of a trust that NhRP created. For years, New York courts have recognized an animal's personhood in the context of a trust.

Summary of the Holding

Although sympathetic to its cause, the New York Supreme Court judge eventually ruled against NhRP and denied the writ application. In it's case, NhRP did not allege mistreatment of Tommy in violation of any rules, regulations, or statutes; rather, it contested that Tommy was being mistreated in a manner consistent with that of a chimpanzee, an animal that the group sought to have recognized as a legal person. On the matter of standing, the court seemingly acknowledged standing because Article 70 permits any party to seek a writ of *habeas corpus* on behalf of a person who is imprisoned. Which seems appropriate since the aggrieved party is imprisoned and therefore cannot petition the court themselves because of the imprisonment. The court was also unreceptive of the argument that by being the beneficiary of a trust, Tommy had already been classified as a legal person. The trust was setup to provide funding for Tommy's care, however the funds are not being funneled to Tommy's owner, Patrick Lavery for that purpose. Rather, the funds will be directed to a sanctuary to provide for Tommy's care in the event he is granted *habeas* relief. Again, although the judge encouraged the petitioners to bring other lawsuits before him to rectify any injuries done to Tommy, he was not prepared to extend the definition of "person" to include Tommy and subsequently, chimpanzees. As of March 29, 2014, NhRP has stated that it will appeal the decision.

State v. Basford, 119 So.3d 478 (Fla. Dist. Ct. App. 2013)

Summary of the Facts

Plaintiff-Appellee Basford owned and operated a large-scale hog farming operation in Florida. Prior to 2002, Basford placed several improvements upon his property, including a breeding barn, a gestation barn, a farrowing barn, two finishing barns, a shelter, a feed mill, an office, four water wells, and a hydraulic loading chute. In 2002, Florida voters passed an amendment to the State's Constitution forbidding the confinement or tethering of hogs during pregnancy in ways that would prevent the animal from turning around freely. The gestation crates that Basford installed in his new gestation barn were in direct violation of the new amendment. Although the "Pregnant Pig Amendment" did not take effect until 2008, Basford shut down his business in 2003 in response to the Amendment's passage but continued to raise crops on the parts of the farm where that practice was viable. Basford estimated that it would have cost $600,000 to bring his operation into compliance with the Amendment. In January 2010, Basford filed an inverse condemnation suit against the State, claiming "that the Amendment deprived him of all economically viable and reasonable use of his business for a particular purpose." At trial, the court determined that the Amendment, which sought to prevent a public harm, indeed constituted a regulatory taking. The trial court found a substantial reduction in the market value of Basford's improvements and awarded him damages in the amount of the fair market value of the improvements minus the salvage value he had already collected. The trial court also stressed that although the Amendment only prohibited the use of gestation crates, a taking of all the improvements had occurred because of their "functionally integrated nature." The State appealed the trial decision.

Summary of the Holding

The Florida District Court of Appeal upheld the rulings of the trial court. First, the court agreed with the trial determination that the four-year statute of limitations did not bar plaintiff's claim because the taking did not occur until the Amendment took effect in November 2008. This rejected assertions by the State that the taking took place in 2002 when the Amendment was passed, or in 2003 when Basford shut down his farm. Next, the State contended that the trial court wrongly determined that an as-applied taking had occurred. On appeal, factual determinations by the trial court are granted deference, but the application of the facts to the law is reviewed *deono o*. The District Court agreed with the trial court once again. At trial, Basford stressed that he did not want compensation for a taking of his land; instead, he sought compensation for a taking of his business. The majority opinion emphasized that real property, tangible property, and intangible property may all be the subject of a takings claim. In doing so, the court rejected the State's claim that a taking did not occur simply because Basford continued to make productive use of his land after the business had been shut down. Finally, the State did not challenge on appeal the trial determinations that (1) the improvements had no other purpose, (2) that Basford could have paid to bring his facilities into compliance, or (3) that the other improvements were functionally integrated with the banned gestation crates in the gestation barn. Based on these conclusions, the court of appeal was bound by the factual findings and final judgment of the trial court.

The Foie Gras Cases

Summary of the Facts	Summary of the Holding
[illegible], No. 2:12-CV-4028, 2013 WL 1191736, at *1 (C.D. Cal. March 22, 2013): In November 2007, Plaintiffs petitioned the United States Department of Agriculture (USDA) and Food Safety Inspection Service (FSIS) to regulate the production of fatty duck liver, better known as foie gras, as an adulterated food product under the Poultry Product Inspection Act (PPIA). FSIS denied Plaintiffs' petition, reasoning that foie gras was neither adulterated nor diseased and that its regular availability on the market did not violate the PPIA. In this suit, Plaintiffs challenge the FSIS decision as arbitrary, capricious, and in violation of the Administrative Procedure Act by being contrary to law.	[illegible] The U.S. District Court granted the USDA's motion for judgment on the pleadings, denied both of Plaintiffs' Motion for summary judgment as moot, and dismissed the case with prejudice. The court's decision was based primarily on the fact that, although Plaintiffs claimed to be petitioning for rulemaking, the reality is that Plaintiffs were petitioning for a ban on all foie gras production under existing laws and regulations. Plaintiffs presented extensive scientific evidence that all foie gras is adulterated and diseased, supporting the court's conclusion that Plaintiffs' petition was challenging a scientific conclusion, not a legal issue.
[illegible], 939 F. Supp. 2d 992 (N.D. Cal. 2013): Plaintiffs brought suits against Defendant HVFG, the largest foie gras producer in the U.S., alleging violations of the Lanham Act due to Defendant's unfair behavior in advertising and of California unfair-competition and false-advertising laws. HVFG markets its products through the use of the slogan "the humane choice." The use of this language by HVFG is the subject of Plaintiffs' claims.	[illegible] At trial, HVFG sought to dismiss on the grounds that plaintiffs lacked standing and failed to state a Lanham Act claim. First, the court determined that one of the parties had standing under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Second, the Plaintiffs alleged facts sufficient to survive a motion to dismiss under Rule 12(b)(6) and provide standing under the Lanham Act. Finally, the court held the assertion that a product is "humane" might subject the producer to a false advertising claim.
[illegible], 729 F.3d 937 (9th Cir. 2013): Plaintiffs are non-California entities that produce foie gras through force-feeding birds. In July 2012, California Health and Safety Code § 25982 took effect. The section banned the sale of products produced through force-feeding birds to enlarge their livers past their normal size. Plaintiffs sued to enjoin the enforcement of §25982, the district court denied the motion for preliminary injunction, and an appeal followed.	[illegible] The Federal Circuit Court of Appeals for the 3rd Circuit affirmed the lower court ruling and denied the motion. The court ruled, *inter alia*, that the code provision was not discriminatory so as to violate the Dormant Commerce Clause. Also, the statute is not invalid simply because it effects interstate commerce.

State v. Fessenden,
310 P.3d 1163 (Or. Ct. App. 2013)

Summary of the Facts

Defendant-Appellant Fessenden, together with her co-defendant Dicke, owned an older horse that was kept on Dicke's property. A neighbor reported to the local sheriff's department that the horse was "very skinny." Officer Bartholomew, who worked with the sheriff's animal control unit, had extensive expertise in evaluating the weight of horses to determine their health. Officer Bartholomew investigated the report, and, based on observations he made from a shared driveway discovered the horse in extremely poor health on the Dicke property. Bartholomew spearheaded an effort to remove the horse from the property and put it in the care of a veterinarian and horse sanctuary for recovery. Defendant was charged with second-degree animal neglect. At trial, Defendant moved to suppress any evidence from Bartholomew's search and seizure. This included any examination, photos, body condition scoring, and statements. At the suppression hearing, Bartholomew proclaimed that he did not apply for a search warrant to seize the horse because if the horse fell over during the application process, it would have died. The trial court denied the suppression motion. First, it held that the vantage point Bartholomew used to view the horse (a driveway shared with the complaining neighbors) was lawful. Next, the requirements for the emergency aid doctrine were satisfied so as to justify a warrantless search and seizure. Finally, probable cause and exigent circumstances justified the search and seizure. A jury convicted Defendant of second-degree animal neglect and Defendant's appealed the denial of the Motion to Suppress.

Summary of the Holding

The Court of Appeals of Oregon affirmed the lower court's denial of Defendant's Motion to Suppress. The appeals court conducted an extensive analysis of whether the emergency aid exception to the warrant requirement of the Oregon Constitution was justified. On appeal, the State presented a vast array of binding authority, persuasive authority, and Oregon statutes supporting the application of the emergency aid exception to nonhuman animals. Or stated differently, can it ever be reasonable for law enforcement to conduct warrantless searches and seizures for the purpose of assisting animals in need of emergency aid? Oregon case law and Oregon statutes reflect a clear state and societal interest in preventing unnecessary cruelty to animals, protecting animals, and promoting animal welfare. In consideration of these cases and statutes, the court elected to extend the emergency aid exception to nonhuman animals. In doing so, the court requires that "officers have an objectively reasonable belief, based on articulable facts, that the search or seizure is necessary to render immediate aid or assistance to animals." The court proceeds to limit its decision by saying that these cases must be analyzed on a case-specific basis. In applying its ruling to the case at hand, the court determined that Officer Bartholomew's actions were reasonable because, by his own estimation, the horse needed emergency medical care. The Defendant's argument that Bartholomew could have fed the horse instead of seizing it was denied because the horse clearly required more assistance than just providing it food. Defendant Fessenden's appeal to the Oregon Supreme Court is pending.

Animal Legal Def. Fund v. State,
12-0971 (La. App. 1 Cir. 4/25/13); 2013 WL 1774638, at *1

Summary of the Facts

Intervenor Tiger Truck Stop operates a service station located off of Interstate 10. In 2001, Tiger Truck Stop acquired and began exhibiting Tony, a male tiger. When Tiger Truck Stop acquired Tony, a parish ordinance was in effect prohibiting a person from keeping or permitting to keep a wild, exotic, vicious animal for exhibition purposes or for a fee. In 2006, the Louisiana legislature enacted a statute instructing the Louisiana Wildlife and Fisheries Commission to promulgate rules to control the importation and private possession of big cats. The Commission implemented rules in November 2007. The most pertinent parts required big cat owners to obtain a permit, for owners to live on the premises with the big cat, to have legal ownership of the big cat prior to August 15, 2006, and to be in compliance with any and all applicable federal, state, and local laws. The owner of Tiger Truck submitted a permit application to the state Department of Wildlife and Fisheries (DWF), and the Department denied the application because Tiger Truck Stop was not in compliance with the parish big cat ordinance. After Tiger Truck Stop filed a lawsuit, the parish amended the applicable ordinance to specifically allow for Tony's exhibition. As a result of the amendment, DWF issued a one-year permit to Tiger Truck Stop. In April 2011, plaintiff Animal Legal Defense Fund (ALDF) filed a petition for injunctive relief and writ of mandamus against DWF. The petition sought to stay DWF from issuing, re-issuing, or renewing a permit for Tiger Truck Stop to exhibit Tony because the truck stop did not qualify for grandfathering status, it illegally possessed Tony under the parish ordinance, and the owners did not live on the premises.

Summary of the Holding

First, the appeals court granted ALDF's motion to strike certain exhibits from the DWF/Intervenor brief from the appeal record, finding that the exhibits post-dated the trial judgment. Next, the court considered whether the trial court correctly overruled DWF's no right of action objection. From this issue, an extensive analysis of standing ensued. Regarding the issue of mandatory injunctive relief revoking Tiger Truck Stop's permit, the court dismissed this issue as moot because Tiger Truck Stop's existing permit had already expired at the time of appeal. On the issue of standing to pursue permanent injunctive relief, the court found that several of the plaintiffs had standing. While it found that plaintiff ALDF lacked the necessary standing to maintain a cause of action, it found that several plaintiff citizen-taxpayers who were also added to the suit did have the requisite standing. Louisiana case law was well settled that citizens could seek judicial review of the acts of public servants if such acts are contrary to law, unconstitutional, or illegal. For ALDF, although the group had committed substantial resources to the case, that alone was insufficient to establish standing. Finally, the court considered the merits of the trial court's decision to enjoin DWF from issuing a permit to Tiger Truck Stop. The court affirmed the decision to grant the permanent injunction because Tiger Truck Stop did not qualify for the state law's "grandfathering" option because, on statutorily required date, Tiger Truck Stop did not legally possess Tony since it was in violation of the parish big cat ordinance. The Louisiana Supreme Court declined to hear Tiger Truck Stop's appeal on October 4, 2013.

Travis v. Murray,
977 N.Y.S.2d 621 (N.Y. Sup. Ct. 2013)

Summary of the Facts

In February 2011, Plaintiff purchased Joey, a ten-week old miniature dachshund puppy. Joey went to live with Plaintiff and Defendant in their apartment. Plaintiff and Defendant married in October 2012, and subsequently separated in June 2013. Defendant removed her possessions from the apartment while Plaintiff was away on a business trip. Along with her possessions, Defendant also removed Joey from the apartment. Upon Plaintiff's return, Defendant claimed that she did not know Joey's location and then later claimed that she lost him in Central Park. Plaintiff filed for divorce in July 2013. Two months later, she motioned that Defendant be compelled to immediately account for Joey's whereabouts, that Joey be returned to Plaintiff's care and custody, and that Plaintiff be granted an "order of sole residential custody of her dog." Defendant, upon learning of the motion, revealed that Joey was actually living with her mother in Maine.

Summary of the Holding

At the onset, the court had the choice of two paths of analysis for this case. The first was a traditional property approach taking into account who purchased the dog and whether the dog was a gift. The second approach was a custody analysis, relying on factors used in child custody cases. After analyzing New York case law and case law from other states, the court concluded that a strict property analysis is the improper standard to apply. In its opinion, the court posited that "[a]lthough Joey is not a human being and cannot be treated as such, he is decidedly more than a piece of property, marital or otherwise." Naturally, the property analysis became merely a factor for the court to consider. Furthermore, the court opined that the child custody analysis was also improper for a case of this nature. Appropriately, the "best interests of the child" standard was rejected as applicable to a custody determination for a dog. However, the court held that the parties were entitled to a full hearing on the matter. The full hearing is not to exceed one day, as a hearing any longer than one day would constitute an unnecessary allocation of judicial resources. The standard to be applied in the hearing is "best for all concerned." This will take into account how each party will benefit from having Joey in her life, as well as how Joey is more likely to prosper under each party's care. A hearing date to determine custody of Joey has yet to be set by the parties.

Koontz v. St. John's River Water Mgmt Dist.,
133 S. Ct. 2586 (2013)

Summary of the Facts

In 1972, petitioner Koontz purchased an undeveloped 14.9-acre tract of land and he sought to develop a 3.7-acre section of that land in 1994. In accordance with the Florida Water Resources Act of 1972, Koontz applied for a Management and Storage of Surface Water (MSSW) permit from the water management district in which the property was located. In issuing such a permit, the water management district "may impose 'such reasonable conditions' on the permit as are 'necessary to assure' that construction will 'not be harmful to the water resources of the district.'" Also in compliance with Florida's Henderson Wetlands Protection Act of 1984, Koontz also applied for a Wetlands Resource Management (WRM) permit. In applying for a WRM permit, respondent St. John's River Water Management District (the "District") required that applicants offset the resulting environmental damage of developing land by creating, enhancing, or preserving wetlands elsewhere. In his application for both permits, Koontz offered to deed the other 11 acres of his land to the District through a conservation easement. The District denied the permit applications because the mitigation measures were inadequate. The District asked that Koontz either (a) decrease the development to 1 acre and deed the remaining 13.9 acres to the District through a conservation easement, or (b) proceed as planned with the 3.7-acre development, deed the remaining acreage to the District, and hire contractors to make improvements on 50 acres of District-owned land miles away from the tract in question. Koontz filed suit in state court alleging the mitigation measures to be excessive considering the environmental impact of the proposed development, and that the District action constituted a taking without just compensation.

Summary of the Holding

On appeal to the United States Supreme Court, Koontz argued that the Court's rulings in *Nollan v. California Coastal Comm'n*, 483 U.S. 285 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), dictated "that the government may condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government's demand and the effects of the proposed land use. The Court held that the government must satisfy the *Nollan/Dolan* requirements even when it denies a permit application. The Court attached no significance to whether conditions of permit approval/denial are based on conditions precedent or conditions subsequent. Rather, the Court exhibited a strong policy against extortionate demands for property in a land-use context. Applying the *Nollan/Dolan* standard to this case, the Court posited that by requiring Koontz to employ contractors to make improvements on other parcels of government property, the government abused "its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed use of the property at issue." Also, the Court made a clear distinction between monetary land-use exactions and property taxes. The former constitutes a taking and the latter does not, even though the two courses of action may achieve the same result.

Alt v. U.S. EPA,
No. 2:12-CV-42, 2013 WL 5744778, at *1 (N.D. W.Va October 23, 2013)

Summary of the Facts

Plaintiff Lois Alt operates a concentrated animal feeding operation (CAFO) in West Virginia. The operation consists of eight poultry houses equipped with ventilation fans, a littler storage shed, a compost shed, and feed storage bins. All of these facilities are under roof. In the course of normal operations, manure particles, feathers, dust, dander, and other particulate matter settled on Alt's farmyard. Rain in the area created runoff from the barnyard that carried the particles across a nearby pasture and into Mudlick Run, a U.S. waterway. Alt lacked the necessary permits under the Clean Water Act (CWA) or similar West Virginia law to allow for such a discharge into Mudlick Run. The U.S. Environmental Protection Agency (EPA) issued Alt a violation because pollutants from her CAFO entered Mudlick Run during a rain and Alt did not possess the necessary National Pollutant Discharge Elimination System (NPDES) permit. Alt's lack of a NPDES permit placed her in violation of the CWA and its implementing regulations. EPA threatened civil penalties in the amount of $37,500 per day of violation, as well as criminal penalties. Alt and intervenors seek declaratory judgment that any pollutants entering U.S. waterways from Alt's CAFO as a result of rain events are exempt under the agricultural stormwater exception of the CWA.

Summary of the Holding

First, the court struggled with ascertaining whether Alt's CAFO qualified as a "point source" under the CWA. Although the CWA definition of point source explicitly includes CAFOs, it also explicitly excludes agricultural stormwater discharges. However, agricultural stormwater discharge is not defined in the statute. Therefore, under the CWA, a CAFO must have an NPDES permit to discharge any pollutants unless that discharge is agricultural stormwater. Since agricultural stormwater discharge is not defined in the text of the statute, it must be given its ordinary meaning accordance with common usage. The court determined that the discharge, being created by precipitation, did originate from Alt's farm, which was agricultural in nature. Since the EPA has not promulgated any regulations on this subject, the agency is not entitled to *he ron* deference for a compliance order. The EPA proceeds to argue that runoff from within the "production area" of the farm is ineligible for the exception. This argument was rejected because the pollutants originated from the farmyard area, and because Alt's entire production area was kept under roof in an effort to prevent the exact discharges with which EPA is concerned. Finally, the EPA asserted the discharge was industrial stormwater. This position was rejected because (1) the compliance order made no mention of industrial stormwater, (2) the second circuit has previously rejected this position, and (3) if discharges from the farmyard are exempt from permitting under the agricultural stormwater exception, they are exempt from any NPDES permit requirements, including industrial stormwater.

Alliance for the Wild Rockies v. Weber,
No. CV 12-90-M-DLC, 2013 WL 5844447, at *1 (D.Mont. 2013)

Summary of the Facts

Plaintiff Alliance for the Wild Rockies (AWR) filed suit in May 2012 challenging the U.S. Forest Service's plan to implement the Flathead National Forest Precommercial Thinning Project. The Project sought to "promote stand health and vigor, restore western white pine stands by promoting genetically improved planted white pine, and to reduce wildland fire risk and hazard by reducing hazardous fuels within the wild urban interface." In preparation for the Project, the Forest Service conducted a biological assessment on bull trout, grizzly bears, lynx, lynx critical habitat, and grey wolves. The U.S. Fish and Wildlife Service reviewed the conclusions of the Forest Service and ultimately agreed that the Project impacts on these species and their habitats would be insignificant. However, the scope of the Project was reduced from over 12,000 acres to roughly 3,600 acres after receiving public comment. Only 500 acres of timber will be thinned per year. In its suit, Plaintiff challenges the depth of the biological assessment analysis and the lack of a Environmental Assessment (EA) and Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA).

Summary of the Holding

Under the Administrative Procedure Act (APA), courts reviewing Forest Service decisions under NEPA must "ensure that the agency made no clear error of judgment that would render its action arbitrary and capricious." The court determined that the agency designation of a categorical exclusion was justified by the absence of extraordinary circumstances, and therefore an EA and EIS were appropriately not required for the Project. The Project qualified for a categorical exclusion because it involves "thinning or brush control to improve growth or to reduce fire hazard." In examining the thoroughness of the biological assessments, the court granted the Forest Service great deference in its conclusions and the reasonableness of its assessments. Additionally, the Forest Service appropriately consulted with the Fish and Wildlife Service when it determined that the Project may affect a listed species or its habitat. The second opinion from Fish and Wildlife Service is to be sought to ensure that no discretionary action by the Forest Service will threaten wildlife. Ultimately, the court denied Plaintiff's motion for summary judgment and granted defendant's cross-motion for summary judgment.

Robinson Twp. v. Commonwealth, 83 A.3d 901 (Pa. 2013)

Summary of the Facts

Pennsylvania municipalities and individuals challenged the constitutionality state act that provided a regulatory framework for the oversight of oil and gas operations. The Pennsylvania legislature passed the act, dubbed Act 13, in response to the increase in hydraulic fracturing, or fracking, activity that had sprung up in the state's Marcellus Shale region. Of particular concern for Plaintiffs were §§ 3303, 3304, and 3215 of Act 13. § 3303 granted exclusive regulatory power to the Pennsylvania oil and gas industry to the state, essentially shutting out local governments from regulation on this issue. § 3304 dictated that all local government authorities must allow for the reasonable development of oil and gas operations. § 3304 also set forth a collection of uniform rules for fracking the state, prohibited local authorities from implementing more stringent rules on oil and production, and created limited time frame for local authorities to review operation proposals. Furthermore, § 3304 demanded that all municipal zoning ordinances be amended to allow for oil and gas activity. Finally, in § 3215, part (b) banned the drilling or disturbing of areas located near streams, springs, wetlands, and other water bodies. However, part (b)(4) provided a simple method for operations to obtain a waiver for the distance restrictions from the state Department of Environmental Protection (DEP). Furthermore, part (d) precluded local governmental bodies from challenging a waiver granted by DEP. These provisions, and others, were challenged on the grounds that they violated Pennsylvania Constitution, article I, § 27, also known as the Environmental Rights Amendment (ERA).

Summary of the Holding

The Pennsylvania Supreme Court created a new framework for analyzing these cases. The ERA begins by conveying two rights upon the citizenry. First, citizens have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. The second right acts a restriction on the state from acting contrary to the first right. Next, the ERA created a public trust doctrine, whereby the state is the trustee of public natural resources, and has a fiduciary duty to conserve and maintain these resources. Under this part, the state has the obligation to (1) "refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources," and (2) "to affirmatively protect the environment via legislation." The court then applied this framework to the sections at bar. Starting with § 3303, the court deemed this provision unconstitutional because it undid extant environmental law frameworks and prevented a local government from carrying out it duties under the ERA. Next, § 3304 was struck down because it would have been impossible for the industry and the municipality to fulfill its public trust obligation under the ERA. § 3304 would have also placed heavier environmental burdens on some municipalities by removing their ability to regulate local oil and gas producers. Finally, § 3215 was found to be in violation of the ERA under the new framework. The court enjoined the enforcement and application of these sections of Act 13 and all other sections because the remaining sections were used to implement the enjoined sections.