

## RECENT DEVELOPMENTS IN ENVIRONMENTAL LAW

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I. COAL INDUSTRY RETIREE HEALTH BENEFIT ACT

*Eastern Enterprises v. Apfel*,  
118 S. Ct. 2131 (1998)

A former coal operator challenged the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) as unconstitutional under the Takings Clause of the Fifth Amendment. The Coal Act was the product of a combination of previous labor agreements between coal operators and the United Mine Workers of America (UMWA) designed to provide health care benefits to retired coal miners. The National Bituminous Coal Wage Agreement (NBCWA), created in 1947, authorized the use of proceeds from coal production royalties for the health care needs of miners and their families. Although several other NBCWAs existed between miners and coal operators as the years went by, miners grew more agitated with the decrease that they saw in their health care benefits with each new agreement. Congress passed the Coal Act in response to the unrest among miners with the hope of satisfying promises that many coal

companies made to miners with respect to healthcare for the miners and their families.

The Coal Act created the United Mine Workers of America Combined Benefit Fund (Combined Fund), a multiemployer plan, which offers retirees and their dependants the same health benefits that they were receiving under previous NBCWAs. The contributors to the fund are coal operators that signed any NBCWA or similar agreement, which required contributions to benefit plans created in 1950 and 1974. The Commission of Social Security (Commission) calculates the premiums which operators must pay by assigning each retiree to a signatory operator under one of three categories. The first category assigns a premium to any operator who was a signatory to any coal wage agreements during or after 1978 and was the most recent operator to employ the retiree for at least two years. The second category is similar to the first one except that it does not place a date restriction on the number of years of employment necessary for the signatory to be liable. The third category assigns a retiree to any signatory operator that employed the retiree for a longer period of time than any other operator before the 1978 coal wage agreement went into effect.

Eastern Enterprises, originally called Eastern Gas and Fuel Associates, transferred its coal operations to one of its subsidiary companies in 1965. Based on its status after 1965 as a noncoal operator, Eastern challenged the third category of the Coal Act as an uncompensated regulatory taking in violation of the Fifth Amendment. The United States District Court for the District of Massachusetts granted summary judgment in favor of the Commission. The United States Court of Appeals for the First Circuit affirmed the lower court's holding and reasoned that the retroactive liability that the Coal Act imposed upon Eastern was supported by a legitimate government interest of satisfying miners' expectations of lifetime health benefits. The United States Supreme Court granted and found in Eastern's favor.

In order to determine whether a governmental action constitutes a regulatory taking, three factors must be evaluated. In *Eastern*, the Court looked at (1) the economic impact the Coal Act had on Eastern, (2) the extent to which the Coal Act interfered with Eastern's investment-backed expectations, and (3) the nature of the Coal Act itself. In addressing the first factor, economic impact, the Court found that the Coal Act threatened Eastern with a severe penalty for failure to give the dollar amount which the Commission calculated under its timetable. The Court quickly rejected the Commission's argument that the Coal Act minimized the economic impact upon Eastern. The Court maintained that the economic impact which the Coal Act imposed upon Eastern was not proportional to

Eastern's experience with the post-1965 benefit plans because Eastern did not participate in negotiations or agree to contribute to any plans after 1965.

The Commission also asserted that the retroactive liability on Eastern was fair because there existed an industry-wide understanding that all coal operators would fund the lifetime health benefits for qualifying miners and their families. Although the Court sympathized with retirees who had relied upon industry promises of lifetime medical benefits, the Court concluded that the Coal Act was an improper solution to addressing the needs of the retirees. The Coal Act, according to the Court, placed a severe, disproportionate, and substantial economic burden on certain employers for past conduct that, in Eastern's case, was unrelated to the company's action during the relevant time period. Therefore, the Court concluded, Eastern could not be held liable for promises that the company never made to retirees.

Eastern also raised the issue of whether the Coal Act violated the company's due process rights with regards to the retroactive impact. However, the Court chose not to address this issue in light of its decision that the Coal Act did constitute a regulatory taking. The Court acknowledged that Congress was correct in its desire to seek a remedy to the problem of providing health benefits to miners and their families, but that Eastern should be exempted because of the undue retroactive burden the Coal Act placed upon the company.

Nancy Abudu

## II. CLEAN WATER ACT AND ENDANGERED SPECIES ACT

### *American Forest & Paper Ass'n v. EPA*, 154 F.3d 1155 (10th Cir. 1998)

The American Forest and Paper Association (the Association), a nonprofit trade association representing paper products companies, filed suit against the United States Environmental Protection Agency (EPA) challenging its approval of Oklahoma's National Pollutant Discharge Elimination System (NPDES) permitting program (the Program). Specifically, the Association challenged the portion of the Program requiring consultation between the Oklahoma Department of Environmental Quality (ODEQ) and the United States Fish and Wildlife Service (FWS) to ensure compliance with the Endangered Species Act (ESA). The Tenth Circuit concluded that the Association lacked standing and therefore dismissed the suit.

Section 402(b) of the Clean Water Act (CWA) allows a state to establish and administer its own NPDES permitting program. Such programs are, however, subject to EPA oversight and approval. Furthermore, as long as certain conditions are satisfied, EPA approval is guaranteed. The EPA must approve any program which meets the statutory requirements.

Oklahoma sought EPA approval of the Program and, after negotiations, it was approved. These negotiations resulted in the inclusion of a consultation process pertaining to permit applications affecting “sensitive waters.” For each “sensitive water” permit application (or application for modification of an existing permit), the Program requires an exchange of information between the ODEQ and the FWS regarding potential impacts on ESA listed species and their habitat. If the ODEQ and the FWS cannot agree on modifications to a particular permit application so as to avoid adverse impacts, the EPA must be notified. The EPA may then make a formal objection to the application. Under certain circumstances, the EPA must make such an objection, and in addition, assume permitting authority and consult with the FWS itself to ensure compliance with the ESA.

The Association challenged the EPA’s approval of the Program. It asserted that the Program was beyond the scope of EPA authority to require Oklahoma to comply with the ESA through the FWS consultation process. In response, the EPA contended that the Association lacked standing to bring the suit; that the suit was not ripe for review; and that it acted within its authority in requiring the consultation procedures. Because the court held that the Association lacked standing to bring the suit, it did not reach the EPA’s other contentions.

The court began its analysis of this case by noting that the Association brought its action under section 509 of the CWA. This section provides that “any interested person” may challenge an EPA determination regarding a state NPDES program. While the Association might be considered an “interested person,” the court stated that meeting this requirement is not enough. Constitutional standing requirements must also be satisfied.

Next, the court reviewed the associational standing requirements as announced by the Supreme Court in *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333 (1977). To have standing, an association must demonstrate that (1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization’s purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. The court additionally noted that the Supreme Court has recognized that

the first requirement of associational standing embodies the Article III standing requirements of injury in fact, causal connection to the defendant's conduct, and redressability.

On the facts before it, the court was reluctant to determine that the Association had satisfied the Article III requirements. Under Article III's injury in fact requirement, a party's injuries must be both imminent and concrete. The court was unwilling to find that the Association's members had such an injury. The Program did not require a consultation process for permit applications affecting all waters, but only for those affecting "sensitive waters." While the Association had asserted that its members include current NPDES permit holders located in Oklahoma, it had not alleged that any of those members hold permits to discharge into "sensitive waters." Standing must appear affirmatively in the record, and the Association failed to make such affirmations.

Even assuming, for the sake of argument, that the Association's assertions were concrete and imminent enough to satisfy the Article III requirements, the court was nonetheless unwilling to find that it had standing. Without the crucial allegation that its members hold permits or intend to apply for permits to discharge into "sensitive waters," the Association is unable to claim that it would be injured by the Program at all. As a result, the court concluded that the Association lacked standing to sue and dismissed the case.

At the end of the opinion, in Footnote 8, the court referred to a similar case recently decided by the Fifth Circuit. In *American Forest & Paper Ass'n v. EPA*, 137 F.3d 291 (5th Cir. 1998), the Association challenged similar consultation procedures contained in the NPDES program which the EPA approved in Louisiana. In that case, the Fifth Circuit found that the Association had standing and, noting the permit holders' imminent need to comply, rejected the EPA's argument that the permit holders' injuries were speculative. Distinguishing this case, the Tenth Circuit noted only that it is unclear whether the consultation requirements in the Louisiana program were for all permits or only those affecting "sensitive waters."

Scott D. Lyne

III. NATIONAL ENVIRONMENTAL POLICY ACT AND NATIONAL FOREST  
MANAGEMENT ACT

*Friends of Southeast's Future v. Morrison*,  
153 F.3d 1059 (9th Cir. 1998)

Environmental groups brought an action against the National Forest Services for perceived violations of the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA). The controversy centered upon the proposed sale of sixty-seven million board feet of timber from the Ushk Bay area of the Tongass National Forest (Tongass) in Alaska.

Tongass is managed in accordance with the Tongass Land Management Plan, which directs the Forest Supervisor to conduct an Area Analysis to determine where logging will take place in Tongass. In 1991, the Forest Service prepared a "Tentative Operating Schedule" for the proposed timber harvesting. In May of 1992, the Forest Service issued a notice of intent to prepare an Environmental Impact Statement (EIS) for the proposed project in Ushk Bay. The final EIS was not completed until September of 1994. The EIS proposed several alternatives to the proposed project including a no-action alternative. The Forest Supervisor issued a Record of Decision adopting the sixty-seven million board feet of timber alternative.

Plaintiffs brought the present action claiming that: (1) the Forest Service failed to conduct an EIS for the Tentative Operating Schedule in 1991, (2) the final EIS conducted in 1994 was deficient in that it failed to adequately consider the no-action alternative, and (3) the Forest Service violated NFMA when it failed to conduct an Area Analysis under the Tongass Land Management Plan.

The court first addressed the plaintiff's claim that an EIS should have been conducted in 1991. NEPA requires an EIS for "every recommendation or report on proposals for legislation and other Major Federal Actions significantly affecting the quality of the human environment." The court deferentially reviewed whether the Forest Service's decision not to conduct an EIS on the Tentative Schedule was unreasonable. The court, citing its previous case law, stated that an EIS is only required when a federal agency makes an "irreversible and irretrievable commitment of the availability of resources." The court found that the Tentative Operating Schedule did not qualify as an "irreversible and irretrievable commitment" of resources, because it "makes no commitment of any part of the national forests." The Forest Service "retains absolute authority" to decide whether any timber

activities will ever take place in Tongass. The plaintiffs failed to demonstrate that the Forest Service had compromised its absolute right to prevent logging at Ushk Bay. Without this irretrievable commitment of resources, the Tentative Operating Schedule did not require that an EIS be conducted.

The court also struck down the plaintiffs' second claim, that the final EIS was deficient. Under NEPA, the agency is required to look at every reasonable alternative in an EIS. The plaintiffs claimed that the Forest Service insufficiently considered the "no-action" alternative, because the EIS only briefly addressed it. The Forest Service determined that the "no-action" alternative would not meet the purpose or need of the project. Typically, the court allows agencies tremendous deference in defining the scope of their projects. In the present case, the purpose of the project was outlined in the Tongass Land Management Plan (TLMP). One of the stated goals of the TLMP was to ensure the current levels of timber-related employment. The court held that the Forest Service's decision to reject the no action alternative was reasonable in light of at least one goal of the TLMP.

Finally, the court addressed the plaintiffs' claim that the Forest Service had violated NFMA by not conducting an "area analysis" for the proposed project. NFMA requires resource plans and contracts to be consistent with the land management plans of the site. The TLMP required the Forest Supervisor to conduct an area analysis in addition to the EIS. The plaintiffs claimed that the Forest Supervisor never conducted the area analysis. The Forest Service claimed that the area analysis was conducted within the confines of the EIS. The court reasoned, using the definition of "tiering" contained in 40 C.F.R. § 1508.28, that the decision to eliminate alternative sites was made before the EIS was issued, and thus was made without the opportunity for public comment. This fact violated the TLMP's requirement that the area analysis provide opportunities for the involvement of potentially affected interests. The court upheld the district court's grant of injunctive relief because the Forest Service's failure to comply with the requirements of the TLMP was a violation of the NFMA.

Brian E. Bentley

## IV. DISPUTES OVER ESTATES IN LAND

*Leisnoi, Inc. v. Stratman,*  
154 F.3d 1062 (9th Cir. 1998)

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA) to resolve land disputes between the federal government, the state of Alaska, Alaskan Natives, and nonnative settlers. As a result, Alaskan Natives received approximately forty-four million acres of land and nearly one billion dollars in federal funds. Most of the land was transferred in fee simple to twelve "Regional Corporations" and their "Village Corporation" subdivisions. Twenty-two million acres of the land granted pursuant to ANCSA are "dually owned." Accordingly, the Village Corporations own the surface estates, and the Regional Corporations own the subsurface estates.

In 1974, the Department of the Interior certified Leisnoi, Inc. as a Village Corporation for the Native village of Woody Island. Leisnoi selected some land on Woody Island, as well as some land on Kodiak Island and Long Island, and received the surface estates in the chosen property. The Regional Corporation of Koniag received the subsurface estate in Leisnoi's land on Kodiak Island. Koniag subsequently issued a quitclaim deed transferring sand and gravel rights in a portion of this land to Omar Stratman, one of Leisnoi's enemies. To prevent damage to the surface estate and the potential destruction of artifacts buried in the ground, Leisnoi demanded that Stratman obtain its consent prior to dredging. Stratman, however, disagreed and began extracting gravel from his subsurface estate in July of 1996. In response, Leisnoi filed an action in federal district court to obtain injunctive and declaratory relief.

The district court, however, granted Stratman's motion to dismiss, holding that, under the ANCSA, a subsurface-estate owner must only obtain the consent of a Village Corporation when he wishes to mine lands "within the boundaries of a Native village." Since the Kodiak Island land was located twelve miles away from the Village of Woody Island, Kodiak Island was not within the boundaries of the Native village of Woody Island and therefore did not require such consent. Leisnoi appealed the district court's decision.

In its appeal, Leisnoi contended that the district court had misconstrued Section 14(f) of the ANCSA, which delegated to Village Corporations the power to withhold consent from, and thereby preclude, mining operations. Leisnoi argued that, as stated in the statute, "the lands within the boundaries of a Native village," should include all lands



patented to the Village Corporation, or at least all lands historically used by the Native village. Either interpretation entitled Leisnoi to relief.

The Ninth Circuit rejected appellant's arguments. In its consideration of the issue, the court read the relevant statutory provisions and construed them according to the ordinary meaning of the words used. Accordingly, the court decided that Section 14(f) of the statute expressly contemplated two distinct abstractions: the lands patented to a Village Corporation and the lands within the boundaries of a Native village. The court found that if Congress intended for the consent term in subsection (f) to apply generally, it would have utilized language requiring consent for all patented lands, instead of the restrictive "within the boundaries" language. Since the land within the Native village was a subset of the total patented lands, the plain language of the statute indisputably verified that Congress did not require consent for mining in all patented lands.

Next, the Ninth Circuit considered the actual physical boundaries surrounding the land in question. The court examined the Secretary of the Interior's interpretation of the consent provision of Section 14(f) of the Act, and afforded the interpretation the "great weight" that it was entitled to upon judicial review absent inconsistency with Congress's intent or unreasonableness. To establish boundaries, the Secretary required that the village have "an identifiable physical location" based on "evidence of occupancy consistent with the Native's own cultural patterns and lifestyle."

Leisnoi argued that the use of expansive terms like tribe, band, clan, group and community illustrated Congress' intent that a Native village include the Natives' entire community. Consequently, Leisnoi urged the court to define a Native village's boundaries according to the areas in which the Natives historically hunted, fished, hiked and camped.

After consulting several definitions of the word "community," including one included in Webster's Ninth Collegiate Dictionary, the court concluded that the commonly accepted definition upheld the Secretary's construction. The court further established that the government's interpretation was reasonable, because the Secretary's understanding of the word "location" was identical to the ordinary definition of the word contained in Webster's Dictionary and no contrary definition was included in the statute.

Leisnoi alleged that the Secretary's interpretation was unreasonable for three reasons. First, Leisnoi argued that creating boundaries based on occupancy rendered the statutory consent provision futile for the Native village of Woody Island. Leisnoi did not own the surface estate of the land on which the village's structures and dwellings were located, and could never receive patents to that land since it was located within two

miles of the City of Kodiak. Consequently, Leisnoi could never legally withhold consent over any property.

The court assumed that the statutory consent power was limited to land which the Village Corporation owned, and held that this construction was consistent with the plain meaning of the statute. While the court recognized that this decision could create unfairness in a few instances, it acknowledged that perfection should not be expected from an expansive statute like ANCSA, which attempts to settle land disputes in over 200 villages across the largest state in the United States.

Leisnoi also attacked the Secretary's interpretation as unreasonable because it was inconsistent with legislative history. The appellate court, however, found this argument unpersuasive and explained that legislative history is not written or scrutinized with the same care as statutory language. Additionally, since the legislative history was unclear, it could not displace the Secretary's understanding of the text of the statute.

Finally, Leisnoi contended that defining boundaries by occupancy was unreasonable because it stifled the overarching policy of economic growth explicated in the statute's preamble. The court rejected this argument, and acknowledged that surface and subsurface estate owners could resolve their disputes through contract negotiations.

In light of the foregoing, the court held that the Secretary's interpretation of the statute was not unreasonable and, therefore, the boundaries of a Native village were defined by occupancy, not historical use.

To test this result, the court considered whether the Native village of Woody Island had demonstrated any evidence of occupancy on Kodiak Island, and ultimately decided that it had not. When the Native village applied for benefits pursuant to ANCSA in 1973, it reported that it was located within townships. It also indicated its location on a map. On the map, the townships were clearly on Woody Island, not Kodiak Island. Later that year, the Bureau of Indian Affairs confirmed this location. Leisnoi never suggested that the village expanded to occupy Kodiak Island. Stratman received a valid deed from Koniag and did not need Leisnoi's additional consent to proceed with his mining there. The United States Court of Appeals for the Ninth Circuit conclusively held that the district court did not err in granting a dismissal, and therefore affirmed the lower court's decision.

Julia C. Haffner

V. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

*Minnesota v. Kalman W. Abrams Metals, Inc.*,  
155 F.3d 1019 (8th Cir. 1998)

The United States Court of Appeals for the Eighth Circuit affirmed in part and reversed in part the decision of the United States District Court for the District of Minnesota granting summary judgment to nonsettling defendants who were sued by the State of Minnesota to recover costs incurred in cleaning up lead-contaminated soils under the federal “superfund” law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and its state law counterpart, the Minnesota Environmental Response and Liability Act (MERLA).

The defendants are present and former owners of companies that provided scrap wire to Gerald McGuire who recycled the used wire in an environmentally unsound manner and then distributed the ash produced from the recycling process over portions of his property. Both the Minnesota Pollution Control Agency (MPCA) and the Environmental Protection Agency (EPA) conducted analyses of the soil on McGuire’s property which revealed hazardous concentrations of lead. Without first determining whether McGuire would agree to undertake the clean up at his own expense, the MPCA authorized the expenditure of funds to clean up the site.

The district court disposed of the State’s claims to recover all response costs from the scrap dealers. The State raised two claims on appeal: first, whether the appellate court lacked jurisdiction because the district court orders were not final and appealable; and second, whether the MPCA acted arbitrarily and capriciously in selecting a cleanup action and in failing to notify defendants of its proposed response action.

Addressing the jurisdictional issue first, the court acknowledged that there is no statute or rule which dictates the necessary elements of a final judgment, but it is sufficient if the trial court indicates “some clear and unequivocal manifestation” that its decision will end the case. The State claimed that the trial court’s orders granting summary judgment to the nonsettling defendants were not final because they did not resolve claims against the settling defendant, Leder Brothers. Even though the consent decree with Leder Brothers was not entered until two months after the summary judgment rulings by the trial court, the Eighth Circuit held that final approval of the Leder Brothers settlement was a “ministerial task”

which did not eviscerate the finality of the orders in favor of the nonsettling defendants.

To resolve the second issue, the court looked to Section 9607 of CERCLA which mandates that all removal or remedial costs incurred by the State must be consistent with the national contingency plan (NCP). The NCP consists of a group of EPA procedural regulations that require an agency which is responding to a release of hazardous substances to choose a cost-effective approach. If the State can establish that the defendants were responsible for the release of hazardous substances and that costs were incurred by the State agency to remedy the release, then the defendants have the burden of proving that the agency's chosen course of action was not cost-effective and thus inconsistent with the NCP. After applying the arbitrary and capricious standard of review to evaluate MPCA's cleanup approach, the court concluded that the defendants met their burden of showing that the agency did not comply with the NCP standards for remedial action because the chosen remedy, soil washing, was "an untried, high-risk, high cost remedy" that forced the State to incur greater expense than necessary. However, the court disagreed with the trial court's determination that the State should receive no cost recovery at all. The Eighth Circuit authorized the State to recover only appropriate costs that were not inconsistent with the NCP.

In resolving a corollary issue which was not before the court but which was likely to arise on remand, the court held that MPCA's actions were also inconsistent with the NCP because the agency failed to notify and involve the responsible parties before authorizing the expense of state superfund monies and undertaking the clean up on its own. The court concluded that all defendants were "known" responsible persons from whom the agency would likely seek reimbursement, and therefore, they should have been given formal opportunity to comment on the agency's choice of action and to undertake the clean up at their own expense. If, on remand, the defendants can prove that they would have and could have cleaned up the site more cost effectively, then, under CERCLA, the State cannot even recover costs incurred in implementing remedial actions that were appropriate. The court held the same to be true for State recovery claims under the state superfund statute, MERLA.

Finally, the court held that, under MERLA and applicable Minnesota law, the State did not timely initiate legal or administrative proceedings against one defendant, Blum Holdings, before that corporation dissolved. The court found that neither MPCA's request for information issued to Blum Holdings nor a preliminary letter written to A & D Recycling, which had purchased the assets of the predecessor of Blum Holdings, constituted the kind of formal proceedings that Minnesota law requires a

creditor to commence in order to avoid the consequences of corporate dissolution.

Whitney B. Pitkanen

#### VI. FEDERAL PARAMOUNTCY DOCTRINE

*Native Village of Eyak v. Trawler Diane Marie, Inc.*,  
154 F.3d 1090 (9th Cir. 1998)

Various Native Villages of Alaska brought an action against the Department of Commerce (DOC) claiming that they retained an unextinguished aboriginal title to a portion of the outer continental shelf (OCS). The District Court held that their claims were invalid because they were barred by the federal paramountcy doctrine. The Native Villages brought this appeal in the Ninth Circuit.

The Native Villages claimed that they have hunted sea mammals and harvested the fishery resources of the OCS for more than 7,000 years. Because of this unextinguished aboriginal title, they asserted that the DOC violated their rights to exclusive use and occupancy of the OCS. The Secretary of Commerce manages fisheries pursuant to the Magnuson Fishery Conservation Management Act (Magnuson Act) which extends sovereign control of the United States to waters lying between three and two hundred miles off the coast of the United States. In Alaska, pursuant to this control, the United States limited access to sablefish and halibut fisheries in the Gulf and Alaska. The Native Villages argued that this control improperly authorizes non-tribal members to fish within the Native Villages' exclusive aboriginal territories while simultaneously limiting the fishing of tribal members.

The court first addressed the federal paramountcy doctrine and its precedential history. It cited four Supreme Court cases in which the federal government and various states disputed ownership and control of the territorial sea and the adjacent portions of the OCS. The first was *United States v. California*, 332 U.S. 19 (1947) wherein the Court concluded that matters which occur in the open sea are national questions, and are directly in the interest of the health and security of the country. Therefore, the Court argued, these waters must stay within federal control. The Court held that the Federal Government, rather than the State of California, is the owner of the three-mile belt along its coast.

The Court then looked at *United States v. Louisiana*, 339 U.S. 699 (1950) wherein the Court concluded that although Louisiana claimed that it had always exercised dominion over its coastal waters extending

twenty-seven miles into the Gulf of Mexico, the marginal sea is a national, not a state concern.

The Court again looked at the federal paramountcy doctrine in *United States v. Texas*, 339 U.S. 707 (1950), wherein Texas argued that because it was a separate republic prior to its entry into the United States, it had only relinquished *imperium*, and not *dominium* to the federal government, therefore the coastal waters were still within its dominium. The Court disagreed stating that both *imperium* and *dominium* were relinquished when Texas joined the Union and therefore, the coastal waters fell under the federal paramountcy doctrine.

The final historical case that the court discussed was *United States v. Maine*, 420 U.S. 515 (1975), wherein the Court again concluded that notwithstanding Maine's argument that it had acquired dominion over the offshore seabed prior to the adoption of the Constitution and had not since relinquished it, the federal paramountcy doctrine still applied and served as a bar to state control over these waters.

The court then began its analysis by determining whether the federal paramountcy doctrine serves to bar not only state claims to the OCS, but also claims made by the indigenous peoples of these lands. The Native Villages argued that tribal aboriginal title is not based on the same property claims as state titles. They asserted that an aboriginal title is not a legal title, nor even a property right. Therefore, they argued, their claim does not conflict with the federal government's paramount interests in the OCS. They further asserted that federal sovereignty is subject to the Indians' right of occupancy unless and until extinguished by Congress. The court disagreed and held that only limited assertions of aboriginal subsistence rights were contemplated by the courts. The court re-emphasized that any claim of sovereign right or title over the ocean by any party other than the United States is equally egregious to the principles established in the paramountcy cases. The court concluded that there was not a difference between the relief sought by the Native Villages and that sought by the states in the paramountcy cases.

The Native Villages then argued that a "joint ownership" which distinguished between tribal and nontribal member fishing rights could apply. The court immediately dismissed this argument stating that this was not a valid concession.

The Native Villages next argued that they were entitled to exclusive use of the OCS because they hunted and fished in the sea for thousands of years prior to the founding of the United States. The court rejected this argument, holding that the paramountcy doctrine still would apply because national interests, national responsibilities, and national concerns are involved in all cases dealing with coastal waters.

Consequently, the court upheld the district court's holding that the Native Villages' claims to the OCS were barred by the federal paramountcy doctrine.

Inga Haagenon Causey