

1-1-2006

## City of Guymon v. Cal Farley's Boys Ranch Found., CIV 04-457-BA, 2005 U.S. Dist LEXIS 38506 (W.D. Okla. Dec. 30, 2005)

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### Custom Citation

Kathryn Lane Garner, Court Report, City of Guymon v. Cal Farley's Boys Ranch Found., CIV 04-457-BA, 2005 U.S. Dist LEXIS 38506 (W.D. Okla. Dec. 30, 2005), 9 U. Denv. Water L. Rev. 641 (2006).

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sult absent the issuance of a preliminary injunction. The dredging and filling of the wetlands alongside the threatened contamination of Lake Powell cannot be undone or compensated through money damages.

Finally, the district court briefly addressed the remaining elements of acquiring a preliminary injunction and concluded that the balance of possible harms and public interest considerations weighed in the Sierra Club's favor. The Corps did not enumerate any specific harm that it would suffer because of the injunction, and although third parties may suffer losses in terms of missed development opportunities, there was a strong public interest in ensuring that the Corps act within its statutory boundaries. Further, the district court made special note of the fact that nothing in its order precluded a party from seeking an individual permit within the area specified by SAJ-86.

Therefore, the district court granted the Sierra Club's Motion for Preliminary Injunction, enjoined the Corps from issuing any new authorizations under SAJ-86, and enjoined any further development on the WaterSound North project until further order of the court or until the developers were able to obtain an individual permit.

*Michelle Young*

**City of Guymon v. Cal Farley's Boys Ranch Found., CIV 04-457-BA, 2005 U.S. Dist LEXIS 38506 (W.D. Okla. Dec. 30, 2005)** (holding that a city's proposed taking of a privately-owned water supply did not violate the federal or state constitutions' public purpose requirements when the city engineer's report documented an increase in population and a corresponding decrease in the city's available water supply).

The City of Guymon, Oklahoma ("City") passed a resolution seeking to exercise eminent domain over surface and water rights owned by Cal Farley's Boys Ranch Foundation ("Ranch"). A number of specific Oklahoma statutes authorize a municipality to exercise its eminent domain power for expansion of its water supply. However, both the United States Constitution and Oklahoma's state constitution require that the proposed taking involve a public use or purpose. The Ranch filed three exceptions to the City's proposed taking and moved for summary judgment on the third exception in the United States District Court for the Western District of Oklahoma, which claimed the taking did not serve a public purpose. The district court found the City's action did not violate either the federal or the state constitutions.

First, the court analyzed the City's action under the state constitution. For purposes of the state constitution, the City had the burden of proof to establish that the taking served a public purpose. The district court accepted the City Engineer's report indicating that the City's increase in population and decrease in available water supply constituted a *prima facie* showing that the taking served a public purpose. In addition, the court found the Ranch had not shown the City acted in

fraud, bad faith, or committed an abuse of discretion because evidence from both the City and the Ranch indicated an increase in the City's population.

Next, the court analyzed the validity of the City's proposed taking under the Fifth Amendment of the U.S. Constitution. The Constitution only allows a taking when the action satisfies the following two requirements: (1) the taking involves a legitimate public use, and (2) the means are rationally related to this use. The Ranch argued that the taking served a private purpose rather than a public purpose, because the City's real interest was in subsidizing a privately owned company, Seaboard Farms of Oklahoma, Inc. ("Seaboard"). However, the court found a municipality's efforts to attract private enterprise in order to create jobs, provide infrastructure, and stimulate the local economy constituted a valid public purpose. The Ranch also argued that it was Seaboard and not the City that needed more water. The court rejected this argument based on the City Engineer's report stating the City had an increased demand for water.

The court held that the City's finding that its population had increased while its water supply had decreased was a *prima facie* showing of public purpose and did not violate the state or the federal constitution. As such, the court rejected the Ranch's summary judgment motion.

*Kathryn Lane Garner*

**Borough of Carlstadt v. U.S. Army Corps of Eng'rs, No. 05-2771 (JAP), 2006 WL 305314 (D.N.J. Feb. 8, 2006)** (holding that purely financial interests that are only nominally connected to water use are outside the zones of interests protected by section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act).

The Borough of Carlstadt ("Carlstadt") brought charges against the United States Army Corps of Engineers ("Corps") and Meadowland Mills/Mack-Cali Limited Partnership ("Developer") seeking nullification of a permit allowing 7.69 acres of federal wetlands and open waters in East Rutherford, NJ to be filled for the construction of a megamall called Xanadu. Among other claims, Carlstadt argued that in granting the permit, the Corps violated section 404 of the Clean Water Act ("CWA") and section 10 of the Rivers and Harbors Act ("RHA"). The United States District Court for the District of New Jersey held that Carlstadt failed to establish that it had prudential standing to maintain its cause of actions and dismissed the complaint with prejudice.

The Xanadu project is a mixed-use redevelopment of the Continental Airlines Arena site located in the New Jersey Meadowlands, an environmentally sensitive area protected by the New Jersey legislature. The Developer applied for a permit to fill 7.69 acres of federal wetlands and open waters for the project. The Corps issued the permit