Case Law Index Updates – June 1, 2010

Rusty W. Rumley

Staff Attorney

Agricultural Leases

Ninth Circuit

Bedke v. Sec'y of Interior, No. CV-09-399-E-DOC, 2010 WL 2000052 (D. Idaho May 19, 2010) (Taylor Grazing Act)

W. Watersheds Project v. U.S Bureau of Land Mgmt., No. 09-0629-E-BLW, 2010 WL 1816254 (D. Idaho May 4, 2010) (enjoining grazing on federal lands)

Federal Circuit

O'Bryan v. United States, --- Fed.Cl. ----, 2010 WL 1990049 (Fed. Cl. 2010) (administration of tribal grazing permits)

Missouri

Hoffman v. Estate of Siler, 306 S.W.3d 584 (Mo. Ct. App. 2010) (wrongful eviction; tenants where year-to-year).

Agritourism

Kentucky

Moore v. Stills, 307 S.W.3d 71 (Ky. 2010) (recreational use statute barred adverse possession claim)

Alternative Dispute Resolution

Eighth Circuit

Dyrdal v. Enbridge (U.S.), Inc., No. 10-1970, 2010 WL 1957494 (D. Minn. May 13, 2010) (petition under Federal Arbitration Act)

Animal Feeding Operations

Second Circuit

Humane Soc'y of United States v. HVFG, LLC, No. 06 CV 6829(HB), 2010 WL 1837785 (S.D.N.Y. May 06, 2010) (private party action for a violation of the Clean Water Act)

Idaho

Idaho Dairymen's Ass'n v. Gooding County, 227 P.3d 907 (Idaho 2010) (challenging county CAFO ordinance)

Indiana

Pardue v. Perdue Farms Inc., 925 N.E.2d 482 (Ind. Ct. App. 2010) (nuisance action against turkey growers over contaminated groundwater)

Animal Welfare

Third Circuit

Dice v. Johnson, --- F.Supp.2d ----, 2010 WL 1791138 (M.D. Pa. 2010) (animal cruelty and defamation)

Barber v. Pennsylvania Dep't Agric., No. 9-1462, 2010 WL 1816760 (W.D. Pa. May 03, 2010) (violation of civil rights in seizure of dogs and closure of kennel)

Sixth Circuit

White v. United States, 601 F.3d 545 (6th Cir. 2010) (constitutional challenge to anti-animal-fighting provisions)

Seventh Circuit

United States v. Berry, 09-CR-30101-MJR, 2010 WL 1882057 (S.D. Ill. May 11, 2010) (sentencing for dog fighting)

Tenth Circuit

Campbell v. City of Spencer, CIV-09-0821-HE, 2010 WL 1780304 (W.D. Okla. May 4, 2010) (takings suit when horses were removed for animal cruelty)

D.C. Circuit

In Defense of Animals v. Salazar, --- F.Supp.2d ----, 2010 WL 2076921 (D. D.C. 2010) (challenge under NEPA and the Wild Horse Act)

Georgia

Fulton County v. S. Hope Humane Soc'y, 691 S.E.2d 393 (Ga. Ct. App. 2010) (animal control provider sued for not remitting fees to county)

Aquaculture

Ninth Circuit

Wild Fish Conservancy v. EPA, No. C08-0156-JCC, 2010 WL 1734850 (W.D. Wash. April 28, 2010) (challenge to state regulations exempting salmon farms)

Bankruptcy

Tenth Circuit

In re Ficken, --- B.R. ----, 2010 WL 1837659 (B.A.P. 10th Cir. 2010) (tax on sale of postpetition assets)

In re Kasparek, 426 B.R. 332 (B.A.P. 10th Cir. 2010) (jointly owned farmland subject to sale by trustee)

Illinois

In re Brooks, No. 08-72073, 2010 WL 2044933 (Bankr. C.D. Ill. May 24, 2010) (legal fees in a Chapter 12 case)

Iowa

In re Crooked Creek Corp., 427 B.R. 500 (Bankr. N.D. Iowa 2010) (priority of an ag supply dealer's lien)

Kentucky

In re Smith, --- B.R. ----, 2010 WL 1872866 (Bankr. W.D. Ky. 2010) (disallowing discharge due to fraud)

Missouri

In re Yates, --- B.R. ----, 2010 WL 2090334 (Bankr. E.D. Mo. 2010) (denial of discharge)

New York

In re Jurgielewicz Duck Farm, No. 8-10-70231-478, 2010 WL 2025503 (Bankr. E.D. N.Y. May 20, 2010) (development rights on property sold in bankruptcy)

In re Adirondack Timber Enterprise, Inc., No. 08-12553, 2010 WL 1741378 (Bankr. N.D.N.Y. April 28, 2010) (relief from automatic stay)

North Dakota

In re Moe, No. 09-31218, 2010 WL 1904830 (Bankr. D. N.D. May 11, 2010) (determining unsecured debt for purposes of Chapter 13)

Ohio

In re Hatfield 7 Dairy, Inc., 425 B.R. 444 (Bankr. S.D. Ohio 2010) (denial of postpetition stay)

Vermont

In re Montagne, Bankr. No. 08-10916, Adv. No. 08-1024, 2010 WL 1780411 (Bankr. D. Vt. May 4, 2010) (seeking payment for feed and other farm supplies)

Clean Water Act

Second Circuit

Humane Soc'y of United States v. HVFG, LLC, No. 06 CV 6829(HB), 2010 WL 1837785 (S.D.N.Y. May 06, 2010) (private party action for a violation of the Clean Water Act) Ninth Circuit

Wild Fish Conservancy v. EPA, No. C08-0156-JCC, 2010 WL 1734850 (W.D. Wash. April 28, 2010) (challenge to state regulations exempting salmon farms)

Climate Change

Ninth Circuit

Western Watersheds Project v. U.S. Forest Service, No. 09-0629-E-BLW, 2010 WL 1816254 (D. Idaho May 04, 2010) (failure to follow NEPA for noxious weeds and global warming)

Tenth Circuit

San Juan Citizens Alliance v. Stiles, No. 08-cv-00144-RPM, 2010 WL 1780816 (D. Colo. May 03, 2010) (NEPA challenge)

Commercial Transactions

Sixth Circuit

Fish Farms Partnership v. Winston-Weaver Co. Inc., No. 2:09-CV-163, 2010 WL 1925043 (E.D. Tenn. May 12, 2010) (breach of contract for nonconforming product)

Corporate Farming Laws

North Dakota

Stenehjem ex rel., North Dakota v. Crosslands, Inc., 782 N.W.2d 632 (N.D. 2010) (evaluation of land for purposes of the corporate farming statute)

Environmental Law

Second Circuit

Humane Soc'y of United States v. HVFG, LLC, No. 06 CV 6829(HB), 2010 WL 1837785 (S.D.N.Y. May 06, 2010) (private party action for a violation of the Clean Water Act)

Ninth Circuit

Western Watersheds Project v. U.S. Forest Service, No. 09-0629-E-BLW, 2010 WL 1816254 (D. Idaho May 04, 2010) (failure to follow NEPA for noxious weeds and global warming) Wild Fish Conservancy v. EPA, No. C08-0156-JCC, 2010 WL 1734850 (W.D. Wash. April 28, 2010) (challenge to state regulations exempting salmon farms)

Tenth Circuit

San Juan Citizens Alliance v. Stiles, No. 08-cv-00144-RPM, 2010 WL 1780816 (D. Colo. May 03, 2010) (NEPA challenge)

Ctr. For Native Ecosystems v. Salazar, --- F.Supp.2d ----, 2010 WL 1961740 (D. Colo. 2010) (de-listing of an endangered species)

Colorado Wild v. Vilsack, --- F.Supp.2d ----, 2010 WL 1257988 (D. Colo. 2010) (NEPA action against proposed sale of timber in a nation forest)

D.C. Circuit

In Defense of Animals v. Salazar, --- F.Supp.2d ----, 2010 WL 2076921 (D. D.C. 2010) (challenge under NEPA and the Wild Horse Act)

Estate Planning and Taxation

Arkansas

Rice v. Seals, 2010 Ark. App. 393, --- S.W.3d ----, 2010 WL 1790472 (Ark. Ct. App. 2010) (confirming sale and distribution of estate)

Finance & Credit

Tenth Circuit

Kroskob v. USDA, No. 09-1209, 2010 WL 1981013 (10th Cir. May 19, 2010) (restructuring FSA loans)

Food Labeling

Second Circuit

Waldman v. New Chapter, Inc., --- F.Supp.2d ----, 2010 WL 2076024 (E.D. N.Y. 2010) (misleading packaging claim)

Fourth Circuit

In re Tyson Foods, Inc., No. RDB-08-1982, 2010 WL 1924012 (D. Md. May 11, 2010) (misleading advertising)

Ninth Circuit

Von Koenig v. Snapple Beverage Corp., --- F.Supp.2d ----, 2010 WL 1980208 (E.D. Cal. 2010) (deceptive labeling)

Meaunrit v. The Pinnacle Foods Group, LLC, No. C 09-04555 CW, 2010 WL 1838715 (N.D. Cal. May 05, 2010) (misrepresentation and adulteration of frozen dinners)

Food Safety

Ninth Circuit

Meaunrit v. The Pinnacle Foods Group, LLC, No. C 09-04555 CW, 2010 WL 1838715 (N.D. Cal. May 05, 2010) (misrepresentation and adulteration of frozen dinners)

Eleventh Circuit

Fitzer v. American Inst. of Baking, Inc., No. CV 209-169, 2010 WL 1955974 (S.D. Ga. May 13, 2010) (food poisoning from contaminated peanut butter)

Labor

Ninth Circuit

Bobadilla-German v. Bear Creek Orchads, Inc., No. CV 07-3058-PA, 2010 WL 1815796 (D. Or. May 5, 2010) (attorney fees in a labor case)

Arkansas

Perez-Benites v. Candy Brand, LLC, 267 F.R.D. 242 (W.D. Ark. 2010) (class certification for violations under FLSA)

California

Martinez v. Combs, 231 P.3d 259 (Cal. 2010) (minimum wage for seasonal workers)

Oklahoma

Gillespie v. Sathers Family P'ship, 228 P.3d 1204 (Okla. Civ. App. 2009) (agricultural worker not covered under workers' comp laws)

Washington

Elliott v. Custom Apple Packers, Inc., 228 P.3d 20 (Wash. Ct. App. 2009) (agricultural exemption to state minimum wage law)

Landowner Liability

Kentucky

Moore v. Stills, 307 S.W.3d 71 (Ky. 2010) (recreational use statute barred adverse possession claim)

Texas

Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874 (Tex. App. 2010) (roaming livestock liability)

Packers and Stockyards

Sixth Circuit

Terry v. Tyson Farms, Inc., 604 F.3d 272 (6th Cir. 2010) (deceptive practices under the P&S Act)

Eighth Circuit

Syverson v. U.S. Dep't of Agric., 601 F.3d 793 (8th Cir. 2010) (registration as a market agency)

Perishable Agricultural Commodities

First Circuit

Movsovitz & Sons of Florida, Inc. v. Doral Bank, No. 08-1898, 2010 WL 1978958 (D. P. R. May 17, 2010) (separation of PACA trust assets from other assets)

Sixth Circuit

Heeren Bros., Inc. v. New Era Canning Co., No. 1:09-cv-70, 2010 WL 2010997 (W.D. Mich. May 18, 2010) (consent decree regarding PACA trust)

Pesticides

Third Circuit

Pritchard v. Dow Agro Sciences, --- F.Supp.2d ----, 2010 WL 936767 (W.D. Pa. 2010) (motion to exclude expert testimony in pesticide case)

Eighth Circuit

Voss v. Saint Martin Coop., No. 09-3239, 2010 WL 2035804 (8th Cir. May 25, 2010) (FIFRA provides no private right of action)

California

Californians for Pesticide Reform v. California Dep't of Pesticide Regulation, 109 Cal.Rptr.3d 428 (Cal. Ct. App. 2010) (challenge under Toxic Air Contaminants Act)

Texas

Davis v. Jordan, 305 S.W.3d 895 (Tex. App. 2010) (pesticide drift liability)

Renewable Energy

Third Circuit

Lookout Windpower Holding Co., LLC v. Edison Mission Energy, --- F.Supp.2d ----, 2010 WL 1976883 (W.D. Pa. 2010) (fraud claim in the construction of a wind farm)

Fourth Circuit

Delta-T Corp v. Pacific Ethanol, Inc., No. 3:09-CV-388, 2010 WL 1816402 (E.D. Va. May 5, 2010) (breach of ethanol technology licensing contract)

Secured Transactions

Eighth Circuit

In re Crooked Creek Corp., 427 B.R. 500 (Bankr. N.D. Iowa 2010) (priority of an ag supply dealer's lien)

Urbanization and Agriculture

Second Circuit

In re Jurgielewicz Duck Farm, No. 8-10-70231-478, 2010 WL 2025503 (Bankr. E.D. N.Y. May 20, 2010) (development rights on property sold in bankruptcy)

Colorado

Palizzi v. City of Brighton, 228 P.3d 957 (Colo. 2010) (evidence to determine market value for condemned farm land)

Idaho

Idaho Dairymen's Ass'n v. Gooding County, 227 P.3d 907 (Idaho 2010) (challenging county CAFO ordinance)

Montana

Hansen v. Granite County, --- P.3d ----, 2010 WL 1858481 (Mont. 2010) (denial and costs associated with proposed subdivision)

New Hampshire

Kalil v. Zoning Bd. of Adjustment of Dummer, 992 A.2d 725 (N.H. 2010) (denial of zoning variance to build game farm)

New York

Town of Copake v. 13 Lackawanna Properties, LLC, 73 A.D.3d 1308 (N.Y. App .Div. 2010) (farmer violated zoning ordinance by dumping waste on property)

Ohio

Terry v. Sperry, --- N.E.2d ----, 2010 WL 1178065 (Ohio Ct. App. 2010), *aff* 'g, No. 08-MA-227, 2010 WL 1178065 (Ohio Ct. App. Mar. 23, 2010) (winery not exempt from zoning regulations)

Oregon

Wetherell v. Douglas County, 230 P.3d 976 (Or. Ct. App. 2010) (agricultural land was precluded from development)

Pennsylvania

Lancaster Twp. v. Zoning Hearing Bd. of Lancaster Twp., --- A.2d ----, 2010 WL 2105154 (Pa. Commw. Ct. 2010) (housing trucks on property zoned for agricultural use)

Dietrich v. Buffalo Twp. Planning Comm'n, --- A.2d ----, 2010 WL 1982394 (Pa. Commw. Ct. 2010) (denial of land use plan to build a swine barn)

Piper Group, Inc. v. Bedminster Twp. Bd. of Supervisors, 992 A.2d 224 (Pa. Commw. Ct. 2010) (challenge to minimum lot size)

<u>Utah</u>

Bingham v. Roosevelt City Corp., --- P.3d ----, 2010 WL 1929561 (Utah 2010) ("takings" suit against city for allegedly diverting groundwater)

Water Law

Georgia

Tunison v. Harper, 690 S.E.2d 819 (Ga. 2010) (domestic and recreational use of water trumped agricultural use)

Oregon

Klamath Irrigation Dist. v. United States, 227 P.3d 1145 (Or. 2010) (certified questions on beneficial use of water and recognition of property right)

<u>Utah</u>

Bingham v. Roosevelt City Corp., --- P.3d ----, 2010 WL 1929561 (Utah 2010) (suit against city for allegedly diverting groundwater)