

ES – 6

Moot Court: USEPA vs. Broken Arrow Winery

Facts of the Case

The Broken Arrow Winery is located in Napa County California. It produces an award-winning zinfandel wine, using grapes grown exclusively in Napa County. During the production process, which takes place in a factory adjacent to the hilly vineyards that produce most of the grapes used in the wine, the grapes are crushed, and the juice produced from the grapes is filtered. The filtered juice then undergoes the fermentation and storage stages that ultimately result in the final wine. The grape skins and the materials filtered out of the juice are piped to a pond located at the bottom of the vineyard. Pigs are allowed to feed on the residual materials, and the pond contents include pig feces as well as the remains of the winemaking process. The pond area was selected for this use because the depression into which the grape skins and filtered materials are placed preexisted the winery operation, so no new and costly construction was required. Formerly, the pond was a seasonal wetland area, with migratory birds sometimes using the pond during the mid-winter months. The lower portions of the winery property are located about 200 yards from the Napa River.

Audubon California complained to the US Fish and Wildlife Service about the impact that the winery had on migratory birds. USFWS relayed the complaint the United States Environmental Protection Agency, which consulted with the Army Corps of Engineers. USEPA concluded that the winery's operations violated the Clean Water Act, and sent an order to the winery, demanding that the winery "cease and desist" from its deposit of materials into the former wetland area. When the winery refused to comply, USEPA sued the winery in the United States District Court for the Northern District of California. The District Court upheld the order of the EPA, and the winery appealed to the Ninth Circuit. The Ninth Circuit decided in favor of the EPA, and the winery sought and obtained certiorari in the United States Supreme Court.

Question Presented

Does the USEPA have jurisdiction under the Clean Water Act to undertake an enforcement action against Broken Arrow Winery?

Class Assignment

One team of five students will represent the appellant, Broken Arrow Winery. One team of five students will represent USEPA. The remainder of the class will act as the Supreme Court, which will hear arguments and then decide the case.

Each of the attorney teams will make an oral argument to the Court, based on a one-page "outline brief" that will be made available to the Court (and the class). Each member of the Court will present a decision, referring to the materials presented in the written briefs and oral arguments.