

Wiley Rein Files Certiorari Petition with Supreme Court in Important Land Rights Case Involving Stock-Raising Homestead Act and Mineral Leasing Act

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On February 11, Wiley Rein filed a petition for certiorari with the Supreme Court of the United States that raises important questions concerning the property rights conveyed to private ownership under the Stock-Raising Homestead Act of 1916 (SRHA) and similar early 20th century homestead acts that conveyed more than 50 million acres to private ownership in the West. The Wiley Rein attorneys who filed the petition on behalf of client Stull Ranches, LLC, include firm founder Bert W. Rein, John E. Barry, and Collin D. Swan.

Under the SRHA, the federal government granted ranchers title to tracts measuring up to 640 acres but retained the ownership rights in all minerals in those lands, together with the right to prospect for and remove the minerals within a bounded tract. Subsequently, in the Mineral Leasing Act of 1920 (MLA), Congress authorized the U.S. Department of the Interior to dispose of the retained minerals through leases to private parties. Neither the SRHA nor the MLA, however, permitted mineral lessees to enter a conveyed tract to support mineral removal operations on other lands.

Stull Ranches owns several tracts of land that were originally conveyed under the SRHA. Stull was sued in 2011 by a mineral lessee that argued that it had the right to traverse Stull's land under the SRHA and the MLA to reach well locations on land owned by the federal Bureau of Land Management. The district court ruled in favor of Stull but, on appeal, the U.S. Court of Appeals for the Tenth Circuit reversed.

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The Tenth Circuit adopted an expansive view of the government’s reserved rights in the SRHA and held that the government’s right to “dispos[e]” of minerals in SRHA-patented lands was broad enough to accommodate a right of entry to support mineral removal operations conducted on other tracts of land. The Tenth Circuit then held that language in the MLA that permits mineral lessees in a common reservoir to enter into a private agreement to “unitize” the leaseholds and share in the costs and benefits of removal also permits mineral lessees to enter any SRHA tract above the reservoir to support mining operations within the unitized area, regardless of whether removal operations are actually taking place within the boundaries of the tract, and notwithstanding that surface owners are not parties to such agreements.

Wiley Rein’s petition argues that the Tenth Circuit’s decision fundamentally misconstrues the disposal reservation in the SRHA and bootstraps the MLA unitization provision to permit a broad expansion of surface entry rights. The petition contends that the decision upends long-established precedent, curtails vested property rights in millions of acres of privately owned land, and contradicts decades of decisions and actions by the Department of the Interior in its administration of the SRHA and the MLA. The petition also warns that the Tenth Circuit decision creates substantial Fifth Amendment Takings Clause issues and is likely to result in widespread litigation between and among surface owners, mineral lessees, and the federal government.

Co-counsel Thompson Coburn LLP represented Stull Ranches in the district court and the Tenth Circuit.

To read the petition, [click here](#).