IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MACHIPONGO LAND AND COAL COMPANY, INC. AND THE VICTOR E. ERICKSON TRUST AND JOSEPH NAUGHTON,

Appellees and Cross-Appellants
v.
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, THE ENVIRONMENTAL QUALITY BOARD AND ARTHUR A. DAVIS, SECRETARY OF ENVIRONMENTAL RESOURCES.

Appellants and Cross-Appellees

BRIEF OF AMICI CURIAE 10,000 FRIENDS OF PENNSYLVANIA, CITIZENS FOR PENNSYLVANIA'S FUTURE, AND PENNSYLVANIA TROUT IN SUPPORT OF APPELLANTS/CROSS-APPELLEES

No. 112 MAP 2000
M.D. Appeal
Docket 2000
Consolidated Case
No. 119 MAP 2000

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STATEMENTS OF INTEREST OF AMICI CURIAE

10,000 Friends of Pennsylvania ("10,000 Friends") is a statewide alliance of over 200 organizations representing more than 300,000 individuals. 10,000 Friends and its members are committed to saving Pennsylvania's countrysides and rural communities, restoring economic and social vitality to the Commonwealth's cities and towns, curbing urban sprawl, and protecting our exceptional natural landscapes, environmental quality and heritage resources.

Citizens for Pennsylvania's Future ("PennFuture") is a statewide, nonprofit public interest organization that works to promote sustainable economic growth and protection of Pennsylvania's environment, both of which are critical to the well-being of future generations of Pennsylvanians. PennFuture seeks to ensure compliance with environmental statutes and regulations and sustainable use of natural resources by engaging in a variety of forms of advocacy, including representation of its members and other organizations in litigation and administrative proceedings.

Pennsylvania Trout ("PennTrout"), also a statewide, nonprofit public interest organization, is dedicated to the preservation and enhancement of Pennsylvania's cold water resources, which provide habitat for numerous fish and wildlife species, provide important recreational opportunities, and contribute to the Commonwealth's supply of fresh water. PennTrout is the state council for Trout Unlimited, a national cold water enhancement organization with over 500 chapters nationwide. With over 15,000 members, including members in Clearfield County, PennTrout is the largest Trout Unlimited council in the nation.

10,000 Friends, PennFuture, and PennTrout (hereinafter the "Conservation Amici") are concerned that the Commonwealth Court's decision, if not reversed, would adversely affect their interest in giving full effect to the legislative policy judgments reflected in Pennsylvania's laws governing environmental protection and management and use of natural resources.

SUMMARY OF ARGUMENT

A basic rule of regulatory takings doctrine is that an alleged taking must be analyzed in relation to the parcel as a whole.[1] This rule is essential to a balanced reading of the Takings Clause which guarantees compensation for genuine takings while granting appropriate latitude to the other branches of government to enact and implement measures necessary to protect the public welfare The Commonwealth Court violated the parcel as a whole rule by (1) excluding over 90% of the petitioners' parcels from the takings analysis, and (2) by focusing solely on petitioners' coal interests, to the exclusion of the numerous other valuable uses permitted on their properties. The Commonwealth Court's erroneous approach to the parcel issue provides, by itself, a sufficient basis for reversing the judgment in this case.

In addition, the Commonwealth Court erred by denying the Commonwealth the opportunity to present evidence to establish that this claim (if it were otherwise viable) would be barred under the "background principles" of Pennsylvania nuisance law. The U.S. Supreme Court's decision in Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1993), indicates that a hearing should be afforded a government defendant asserting a viable nuisance defense to a taking claim. The decisions of this Court demonstrate that, depending upon the evidence the Commonwealth is able to present, the proposed mining activity could well constitute a public nuisance.

ARGUMENT

I. The Commonwealth Court Erred by Failing to Analyze the Petitioners' Takings Claims In Light of the Valuable Uses Permitted of the Parcels as a Whole.

A. The Parcel as a Whole Rule.

A bedrock principle of takings jurisprudence is that an alleged regulatory taking must be analyzed, not in relation to the specific property area or interest being regulated, but in relation to the parcel as a whole. In the landmark case of Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470, 498-500 (1987), affirming the rejection of takings claims remarkably similar to the claims in this case, the U.S. Supreme Court ruled that coal companies' takings claims could not properly be analyzed by focusing exclusively on the coal the companies were prohibited from exploiting. The Court said:

Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature of the interference with rights in the parcel as a whole.

480 U.S. at 496, quoting Penn Central Transportation Co. v. New York City, 438 U.S. 104, 130-31 (1978) (emphasis in original).

The Court's ruling in Keystone is consistent with earlier U.S. Supreme Court rulings articulating and applying the parcel as a whole rule. See Penn Central, 438 U.S. at 130-31 (rejecting argument that a prohibition against development of airspace could be analyzed without considering development that had already occurred on the rest of the parcel); Andrus v. Allard, 444 U.S. 51 (1979) (rejecting claim that a prohibition on the sale of property, by itself, effected a taking; "where an owner possess a full bundle of property rights, the destruction of one strand of the bundle is not a taking because the aggregate must be viewed in its entirety").

More recent U.S. Supreme Court rulings have reaffirmed the parcel as a whole rule. In Dolan v. City of Tigard, 512 U.S. 374 (1994), the Court addressed whether a regulation limiting development along a stream corridor would effect a taking of the landowner's property. Applying the traditional parcel as a whole rule, the Court rejected the argument because the regulation did not limit the owner's ability to maintain a commercial business on another portion of the parcel. See 512 U.S. at 385 n. 6. See also Concrete Pipe & Prods. of California, Inc. v. Construction Laborers Pension Trust., 508 U.S. 602, 643-44 (1993) (relying on the parcel as a whole rule in a unanimous decision rejecting the argument that a federal law increasing a firm's pension liability effected a taking).

As a practical matter, the property as a whole rule prevents takings claimants from converting virtually every regulatory restriction into a taking. As the Supreme Court said in Concrete Pipe, "[t]o the extent that any portion of property is taken, that portion is always taken in its entirety." Id. at 644. Accordingly, unless every regulatory restriction is to be deemed a taking, "the relevant question [must be] whether the property taken is all, or only a portion of the parcel in question." Id.

More fundamentally, the parcel as a whole supports a reading of the Takings Clause that respects the legitimate roles of the other branches of government in enacting and implementing laws designed to protect the public welfare. As Justice Holmes famously remarked, "Government could hardly go on if to some extent values incident to property could not be diminished without paying for every change in the general law." See Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922). This Court made a similar observation in Miller & Son Paving, Inc. v. Plumstead Township, 717 A.2d 483 (Pa. 1998), cert. denied, 525 U.S. 1121 (1999), where it stated that an

expansive interpretation of the Takings Clause could have "a chilling effect on land use planning." The parcel as a whole rule is consistent with the general presumption in favor of the constitutionality of legislative action and the principle that judgments regarding social and economic policy should generally be resolved by the legislative branch. See Eastern Enterprises v. Apfel, 524 U.S. 498, 524 (1998) (quoting Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16-17)) ("[L]egislative acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality.")

The U.S. Supreme Court, the lower federal courts, and the Pennsylvania courts have applied the parcel as a whole rule in two separate ways, both of which are relevant to the disposition of this case. First, the courts have held that where an owner possesses a contiguous land parcel, a regulatory restriction on the use of one portion of the parcel will be analyzed by taking into account the uses permitted on the rest of the parcel. This application of the rule is illustrated by the Supreme Court's Dolan decision, where the Court treated the restricted stream-side corridor as but a portion of the owner's entire contiguous parcel for the purpose of takings analysis. It is also illustrated by the Commonwealth Court's decision in Mock v. Department of Environmental Resources, 623 A.2d 940 (Pa. Cmwlth.1993), aff'd without opinion, 667 A.2d 212 (Pa. 1995), cert. denied, 517 U.S. 1216 (1996), where the court treated the petitioner's entire 5.2-acre contiguous ownership as the relevant parcel for the purpose of analyzing a takings challenge to restrictions on the use of the 3.9 acres of wetland included within the parcel. See also District Intown Properties Limited v. District of Columbia, 198 F.3d 874 (D.C. Cir. 1999), cert. denied, 121 S.Ct. 34 (2000) (rejecting argument that lots carved out of larger property developed as an apartment complex could be considered a separate parcel for the purpose of takings analysis); Zealy v. City of Waukesha, 548 N.W.2d 528 (Wisc. 1996) (analyzing takings challenge to restrictions on 8.2 acres of wetlands in the context of plaintiff's entire parcel consisting of 10.4 contiguous acres); K & K Construction, Inc v. Department of Natural Resources, 575 N.W,2d 531 (Mich. 1997), cert. denied, 525 U.S. 819 (1998) (reversing trial court's takings ruling based on analysis of restrictions on only one portion of owner's contiguous 82-acre property).

Second, courts routinely reject takings claimants' efforts to bolster their cases by separa-ting out one legal interest from their bundle of property rights. Thus, in Keystone, where the plaintiffs alleged a taking of the "support estate" under Pennsylvania law, the U.S. Supreme Court rejected the effort to segment the property, stating that "our takings jurisprudence forecloses reliance on such legalistic distinctions." 480 U.S. at 498. Similarly, in Penn Central, the plaintiffs sought to establish a taking by alleging that the New York law "deprived them of their 'air rights' above the terminal and that, irrespective of the value of the remainder of their parcel, the city has 'taken' their right to this superadjacent airspace, thus entitling them to 'just compensation' measured by the fair market value of these air rights." Id. at 130. The Court rejected the argument, stating that "'[t]aking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." Id.

This Court's decision in Miller & Son Paving, supra, also illustrates the application of the non-segmentation principle to different legal interests in property. In that case the Court considered a takings challenge based on a prohibition against quarrying on the plaintiff's property. While the Court recognized that the ordinance deprived the owner of its interest in using the property as a quarry, it nonetheless rejected the takings claim, observing that the ordinance allowed the owner to engage in other "valuable uses," including "single-family detached dwellings, farm and accessory buildings, public buildings, home occupations and accessory offices for a physician, lawyer, clergyman or other profession." Id. at 486 & n. 3.

There are, naturally enough, some questions about how to apply the property as whole rule under some circumstances. For example, courts have ruled that noncontiguous properties held and managed as part of a single business venture can, at least in some circumstances, be viewed as a single parcel. See, e.g., Naegele Outdoor Advertising, Inc v. City of Durham, 844 F.2d 172, 178 (4th Cir. 1988) (relevant parcel consisted of billboard company's separate billboards throughout

metropolitan area) and Ciampitti v. United States, 22 Cl.Ct. 310, 320 (1991) (parcel consisted of non-contiguous lots owned and managed by developer as part of a single development project). However, there are undoubtedly some limits on the courts' authority to aggregate disparate properties that happen to be held by the same owner. See Lucas, 505 U.S. at 1016 n. 7 (criticizing as "extreme" and "unsupportable" the New York State court's ruling in Penn Central that the relevant parcel consisted of all of the company's various hotel and office properties in the vicinity of Grand Central terminal). Also, the courts have debated whether a portion of a property which has previously been developed and sold off should be included in the relevant parcel. Compare Deltona v. United States, 657 F.2d 1184 (Ct.Cl. 1981), cert. denied, 455 U.S. 1210 (1982) (portions of 10,000-acre development tract previously developed and sold should be included in the relevant parcel) with Loveladies Harbor v. United States, 28 F.3d 1771 (Fed. Cir. 1994) (portions previously developed and sold off should not be included in the relevant parcel, at least when the regulation being challenged was enacted after the property was divided). However, none of these debatable issues is implicated by this relatively straight-forward case. There is no legitimate question about the definition of the appropriate parcel here.

B. The Erroneous Commonwealth Court Ruling.

This case involves a takings challenge to the designation of a tiny portion of the peti-tioners' properties under the Pennsylvania Surface Mining Conservation and Reclamation Act, 52 P.S. section 1396.4e(a)&(b), and the Clean Streams Law, 35 P.S. section 691.315(h)&(I). The designation affects only 96 acres of the 2,037-acre property owned by petitioner Machipongo (less than 6% of the parcel), and 27 acres of the 1350 acres owned by petitioner Erickson & McNaughton (about 2% of the parcel). The designation of the property as "unsuitable for mining" under the Act restricts the owners' ability to directly excavate coal from the designated areas or to locate openings for underground mining on the property. However, the designation has no impact on the use and development of the property for any other purposes, such as timber production, gas development, or residential or commercial development.

To support its finding of a taking the Commonwealth Court, in a divided decision, adopted an entirely novel and radical approach to defining the relevant parcel. See Machipongo Land & Coal Co. v. Commonwealth of Pennsylvania, 719 A.2d 19 (Pa. Cmwlth. 1998). First, in terms of the land area included in the parcel, the court concluded that the petitioners could exclude the portions of their contiguous property not subject to restriction under the Act, so long as the restricted portions, considered by themselves, could be put to some economically viable use. Second, in terms of the different legal interests in the property, the Court concluded that the petitioners could claim a taking of their interest in mining the property for coal without regard to the other legal interests they possess in the property. Each of these departures from the established approach to defining the relevant parcel constitutes reversible error. Considered together, they represent a truly striking disregard of sound and well-settled law.

Erroneous Segmentation of the Land. The Commonwealth Court started its analysis by asserting that the courts "have never agreed on the appropriate method" for determining the size of the land area that should be included in the parcel. Id. at 36. This assertion is flatly wrong, as demonstrated by the numerous precedents discussed above which establish that, at a minimum, the relevant parcel includes all of the owner's contiguous land subject to the regulation. The Commonwealth Court even acknowledged that in Keystone, the U.S. Supreme Court precedent most obviously relevant to this case, the Court analyzed the taking claim "by look[ing] at the contiguous land owned by the Coal Association as well as the regulated land." Id. at 25. The Commonwealth court offered no justification for not following this precedent.

The only support the Commonwealth court cited for its novel approach to the parcel issue is a student law review article. See, Machipango at 28 n.22, where the court acknowledges that it derived this approach from suggestions offered in Comment, "Unearthing the Denominator in Regulatory Takings Claims," 61 U.Chi.L.Rev. 1535 (1994). So far as we can determine, no other

court in the nation has cited, much less adopted, the approach suggested in this article. Nor, for that matter, do we know of any other court which has followed the Commonwealth Court's ruling on the parcel issue. Even if this theory had any merit (it does not, as we explain below), the Commonwealth court had no authority to adopt this speculative new theory and ignore governing precedent on the parcel issue.

The Commonwealth Court did not offer any affirmative arguments in support of this novel test. In fact, there are substantial reasons to reject it. The obvious purpose and effect of this test would be to enormously expand taxpayer liability under the Takings Clause. In addition, it would lead to serious and continuous judicial intrusion into legislative policy judgments.

The only justification the Commonwealth Court offered for this new test was indirect, in the form of criticism of the traditional parcel as a whole rule. However, the Commonwealth Court's criticism of the established rule was both mistaken and irrelevant to this case.

The Commonwealth Court first asserted that there is a "facial unfairness" in the way the traditional parcel as a whole rule affects different landowners. Machipango at 27. The court presented the hypothetical of a ban on development that applies to 10 acres of property held by owner A and to 10 acres of property held by owner B. If owner A owns only the 10 acres subject to the ban, she presumably has suffered a compensable taking. On the other hand, if owner B owns a total of 100 acres, application of the parcel as a whole rule would result in a finding of no taking. While the Commonwealth court thought this outcome unfair, there is nothing unfair about it.

First, the regulations in this hypothetical actually affect the two owners and the two properties quite differently. Assuming the reduction in property value as a result of regulation were proportional to the acreage affected by the restriction, the ban on development would destroy 100% of the value of the property owned by owner A, but would affect only 10% of the value of the property held by owner B. From the standpoint of the basic fairness concerns that undergird takings doctrine, there is obviously a reasonable basis for treating a 100% destruction of an investment differently than a 10% diminution in value.

Second, and more fundamentally, unlike a total ban on development, which obviously can impose a significant economic burden, a restriction of the use of a portion of a property does not necessarily impose any significant net burden on the owner. If the regulation applicable to owner B applies to other owners in the community, owner B will receive economic benefit from his neighbors' compliance with the regulation. The benefit will counter-balance and quite possibly outweigh the detriment he suffers as a result of the regulation. As the U.S. Supreme Court observed in Keystone, 480 U.S. at 491, "While each of us is burdened somewhat by... restrictions [on the use of property], we, in turn, benefit greatly from the restrictions that are placed on others." See also Agins. v. City of Tiburon, 447 U.S. 255, 262 (1980) (owners subject to comprehensive zoning scheme "share with other owners the benefits and burdens of the city's exercise of its police power. In assessing the fairness of the zoning ordinances, these benefits must be considered along with any diminution in market value that [the] owners' might suffer.") Because these kinds of "reciprocal" regulatory effects are commonplace, the parcel as a whole rule is critical to distinguish between genuine takings and the kinds of reasonable burdens we all must bear "to secure the advantage of living and doing business in a civilized society." Andrus, 44 U.S. at 67.

The Commonwealth Court's second reason for disregarding the traditional parcel as a whole rule is simply inapposite to this case. The Court questioned whether the property as a whole rule can fairly be applied in the circumstance where the owner has previously developed and sold off a portion of the property. See Machipongo at 27, citing Deltona, supra. As discussed above, there is disagreement in the case law on this issue and fair ground for debate about how the parcel should be defined under these circumstances. But the problem is irrelevant to the resolution of

this case. The Commonwealth's definition of the appropriate parcel does not depend upon including previously sold off portions in the relevant parcel.

Erroneous Segmentation of the Interests. The Commonwealth Court's second error, after it concluded that between 98% and 92% of the petitioners' land area could be excluded from consideration, was to conclude that it could properly focus solely on the right to mine coal and ignore all of the other possible uses of the portions subject to the "unsuitable for mining" designation. In the court's view, this separate segmentation step was justified because the right to mine coal represents a distinct property interest under Pennsylvania law. As the Commonwealth Court said, "[b]ecause separate estates create separate interests," the relevant parcel for the purpose of takings analysis should be confined to "the coal estate in the UFM ["unsuitable for mining"] designated area." Id. at 29.

This approach is precluded by the precedents discussed above. The fact that separate legal interests can be identified within a unit of property has consistently been rejected as a basis for segmenting the parcel as a whole. The Supreme Court in Keystone rejected this argument in the context of Pennsylvania law and with respect to interests in coal in particular. The argument is contradicted as well by Penn Central and this Court's decision in Miller & Son Paving.[2] The Commonwealth court cites no legal support - and there is none - for its novel approach of segmenting a unit of property according to the separately identifiable legal interests that make up the property. See also Daddario v. Cape Cod Commission, 681 N.E.2d 833 (Mass.), cert.denied, 522 U.S. 1036 (1997)(rejecting a takings challenge to a regulatory prohibition on mining a 70-acre parcel, given that 'the record shows that the property has substantial value for alternative uses").

II. The Commonwealth Court Erred by Failing to Allow the Commonwealth To Introduce Evidence that the Proposed Mining Would Constitute a Nuisance.

The finding of a taking also should be reversed because the Commonwealth Court erred in denying the Commonwealth the opportunity to introduce evidence supporting the argument that the claim is barred under 'background principles" of Pennsylvania nuisance law. Whether or not the Commonwealth ultimately could prevail on this argument, it was entitled, at a minimum, to put on evidence to support the defense.

In Lucas, the Supreme Court ruled that, even when a regulatory restriction eliminates all of a property's economic value, a government defendant is entitled to "resist compensation... if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with." 505 U.S. at 1027. These "antecedent" restrictions, the Court stated, "must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership." Id. at 1029. The Lucas Court recognized that background principles of South Carolina nuisance law could potentially supply a defense in that case. But it ruled that a hearing was required on remand to address the specific property uses involved and "the circumstances in which the property is presently found." Id. at 1031.

The ruling in Lucas clearly entitled the Commonwealth to an opportunity to demonstrate, assuming the elements of a taking could otherwise be established, that these claims are barred under Pennsylvania public nuisance doctrine. The Commonwealth Court cut this defense off at the threshold without even granting the Commonwealth an opportunity to present evidence. The court articulated essentially three reasons for not following Lucas. See Memorandum and Opinion (October 28, 1999). None is persuasive.

First, the Commonwealth Court asserted that coal mining is not a "nuisance per se" under Pennsylvania law. See Memorandum, at 2. This statement is undoubtedly correct, but it is beside the point. The relevant question is whether coal mining can produce pollution that can amount to

a common law nuisance and the answer to that question is clearly "yes." See, e.g., Commonwealth v. Barnes & Tucker Co., 319 A.2d 871 (Pa. 1974); Pennsylvania R. Co. v. Sagamore Coal Co., 126 A. 386 (Pa. 1924), cert. denied, 267 U.S. 592 (1925). Given that the pollution associated with coal mining can result in a common law nuisance, the Commonwealth in this case, just like the State of South Carolina in Lucas, was entitled to present evidence to establish that the regulation serves to prevent a nuisance.

Second, the Commonwealth Court apparently concluded that the common law of nuisance that might otherwise have been applicable to this case has been superseded by statute. See Memorandum at 7 ("what now constitutes polluting the waters of the Commonwealth is governed by the Clean Streams Law"). But the decisions of this Court make abundantly clear that common law nuisance actions continue to exist alongside statutory remedies designed to address water pollution. See Commonwealth v. Barnes & Tucker Co., 319 A.2d at 881; Commonwealth v. New York & Pennsylvania Co., 79 A.2d 439, 444 (Pa. 1951). See also Clean Streams Law, 35 P.S. section 691.701 (explicitly preserving "rights of action or remedies now or hereafter existing in equity, or under the common law").

Furthermore, even if statutory remedies had superseded the right to seek relief under the common law, that would have no bearing on the application of background principles of state nuisance law in the context of a regulatory takings case. The "background principles" doctrine described in Lucas refers to rules of law which are sufficiently long-standing that they may be deemed inherent limitations on the rights of private property ownership. The fact that longstanding background principles may have been incorporated into statute has no bearing on whether the proscribed use was or was not part of an owner's "title to begin with."

Finally, the Commonwealth Court erroneously asserted that destruction of fisheries and of public recreational resources cannot rise to the level of a common law nuisance. The most basic definition of a public nuisance is "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts, section 821. Article I, section 27 of the Pennsylvania Constitution provides:

The people have a right to clean air, pure water, and to the preservation of the natural and scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

Because fisheries and recreational resources are among the resources in which the public has protected rights under the Pennsylvania Constitution, an unreasonable interference with the public's ability to use and enjoy these resources surely rises to the level of a public nuisance. See also Commonwealth v. Barnes & Tucker Co., 319 A.2d at 882 (for the purpose of defining the scope of public nuisance doctrine, "the public has a sufficient interest in clean streams alone regardless of any specific uses thereof[3]").

CONCLUSION

For the foregoing reasons, the Conservation Amici urge the Court to reverse the judgment of the Commonwealth Court.

Respectfully submitted,
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FOOTNOTES

[1]This Court has generally interpreted the Takings Clause of the Fifth Amendment to the U.S. Constitution and Article I, Section 10 of the Pennsylvania Constitution to have the same meaning. See United Artists Theater Circuit, Inc. v. City of Philadelphia, 635 A.2d 612 (Penn. 1993). There is no basis for making an exception in this case, as the parties have apparently recognized throughout the course of this litigation.

[2] As Miller & Son Paving suggests, see 717 A.2d at 487 n.7, a different case might be presented if the petitioners possessed only mineral interests. Because the petitioners possess full fee title to the properties allegedly taken, the parcel as a whole rule is dispositive of this case.

[3] In addition to protecting fisheries and recreational opportunities, the UFM designation also served to prevent water pollution. The Commonwealth Court did not suggest that water pollution is not a public nuisance.