

AND HERE'S TO YOU, JUSTICE WERDEGAR:

Retiring California Supreme Court Jurist Leaves Impressive Environmental Law Legacy

RICHARD FRANK*

The California Supreme Court recently announced that Justice Kathryn Werdegar will retire this August, after serving for twenty-three years on California's highest court. Justice Werdegar is the longest-serving member of the currently-constituted Supreme Court.

Over her twenty-three-year career on the Supreme Court, Justice Werdegar has authored at least twenty-five major opinions on a wide variety of environmental law issues. Her enormous influence on her fellow justices is reflected by the fact that the vast majority of the decisions she wrote on behalf of the court were unanimous.

Justice Werdegar's decisions on behalf of the court reflect the broad range of environmental law issues that come before that tribunal. Her environmental opinions reflect both pragmatism and an abiding view that California's environmental laws deserve robust interpretation and diligent enforcement.

* Professor of Environmental Practice and Director of the UC Davis School of Law's California Environmental Law & Policy Center. Reprinted by permission of the author from *Legal Planet — Insight & Analysis: Environmental Law and Policy* (UC Berkeley School of Law and UCLA School of Law), posted April 20, 2017.

Among Werdegar's most influential environmental law decisions are those broadly interpreting the scope of "development" subject to regulation under California's Coastal Act (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*); opinions finding that federal food laws don't preempt Californians' ability to file lawsuits under the state's Unfair Competition Law alleging food products are falsely labelled "organic" (*Quesada v. Herb Thyme Foods, Inc.*), and that California is free to regulate the importation of kangaroo products notwithstanding the federal Endangered Species Act (*Viva! Int'l Voice for Animals v. Adidas Promotional Retail Operations, Inc.*); that the director of California's Department of Conservation has standing under the Surface Mining and Reclamation Act to challenge a county's approval of mining reclamation plans under SMARA (*People ex rel. Dept. of Conservation v. El Dorado County*); and rejecting a regulatory takings-based challenge to a municipal ordinance restricting conversions of residential hotels to visitor-serving uses (*San Remo Hotel L.P. v. City and County of San Francisco*).

But Justice Werdegar is probably best known for her numerous opinions interpreting and applying the state's most important environmental law, the California Environmental Quality Act (CEQA). Over the past twenty-three years she has authored many of California's most important CEQA decisions, including:

Muzzy Ranch Co. v. Solano County Airport Land Use Commission (applicability of CEQA to land use compatibility plan to area surrounding Air Force base);

City of Marina v. Board of Trustees of the California State University (declaring invalid the University's certification of an environmental impact report due to remaining, unmitigated project effects);

Communities for a Better Environment v. South Coast Air Quality Management District (finding CEQA analysis of a proposed refinery expansion invalid due to its adoption of artificially inflated, hypothetical "baseline" environmental conditions); and

Save Tara v. City of West Hollywood (holding that municipal agreements with a developer that predated the city's preparation of EIR violate CEQA by committing the city to a course of action before fully evaluating the project's environmental effects).

In her CEQA opinions, Justice Werdegar has consistently given CEQA a muscular, “common sense” construction that — to this author, at least — seems fully faithful to the legislative objectives underlying California’s most overarching environmental law.

Among the many environmental decisions penned by Justice Werdegar over the years, however, my favorite is her most recent: *People v. Rinehart*. In that 2016 opinion on behalf of a unanimous court, Werdegar upholds the criminal conviction of a miner who had violated California’s ban on environmentally-destructive suction dredging in state waterways, rejecting the miner’s defense that the federal Mining Act of 1872 preempts the state’s dredging ban. Werdegar’s opinion — besides reaching a sound result — is an absolute delight to read. It reveals Justice Werdegar’s love of California history and places this modern environmental dispute in a fascinating historical context. (The *Rinehart* case — analyzed in more detail in *Legal Planet* colleague Sean Hecht’s earlier post — is currently before the U.S. Supreme Court, following a petition for certiorari filed by the Pacific Legal Foundation on behalf of the miner defendant.)¹

Just as U.S. Supreme Court Justice John Paul Stevens emerged as that court’s most influential environmental voice over the course of his thirty-five-year tenure on the high court, California Supreme Court Justice Kathryn Werdegar has been this state’s most commanding environmental law presence over the past twenty-three years. Her numerous, authoritative opinions on CEQA, preemption and many other key environmental law issues will influence lower courts, environmental lawyers and California’s environment far into the future.

Thank you for your public service and consistent judicial excellence, Justice Werdegar. Your impending retirement from the Supreme Court will leave a void in California environmental law that will be most difficult to fill.

★ ★ ★

¹ Editor’s Note: *cert. denied*, 583 U.S. ____ (Jan. 8, 2018) (No. 16-970).