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Lacono Invs., LLC v. Balash, 765 F.3d 1068 (9th Cir. 2014)

Daphne Hamilton

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the court held that the Secretary's decision to discuss only one alternative, a no-action alternative, was not arbitrary and capricious. The court cited NEPA regulations that require an EIS to rigorously explore and evaluate all reasonable alternatives, but do not detail a minimum number of alternatives. The court reasoned that there was no benefit for the Final Implementation Agreement EIS to discuss other hypothetical alternatives because the transfer plans were carefully negotiated agreements between the parties.

Finally, even though the district court did not address the claim, the court considered Imperial's argument that the Secretary should have conducted a CAA conformity determination. Imperial claimed that such a determination was necessary because the planned transfers would increase the Salton Sea's shoreline, thus increasing the amount of particulate matter with a diameter of ten microns or less ("PM10") in the ambient air. The court held that the Secretary did not violate the CAA by not performing a conformity determination. The court reasoned that neither state nor federal rules mandate the form an agency must use when announcing that it will not conduct a full-scale conformity determination. In this case, the Secretary announced that she believed a conformity determination was unnecessary in the Final Implementation Agreement EIS, and the court agreed that the CAA did not require a standalone document. Both federal and state rules require a full-scale conformity determination when both direct and indirect emissions exceed the mandated level. The court held the Secretary did not abuse her discretion by concluding that the project would neither directly nor indirectly cause PM10 emissions. The project would not directly increase PM10 emissions at the Salton Sea because the proposed action would occur at diversions at the Parker and Imperial Dams—far from the Salton Sea. The court reasoned that the project would not indirectly cause an increase in PM10 emissions because the Secretary could not practicably control any resulting emissions. Rather, the State of California and Imperial would ultimately be responsible for the allocation of water to the Salton Sea, thus indirectly causing any subsequent PM10 emissions.

Accordingly, the court affirmed the judgment of the district court and held that the Secretary did not violate NEPA or CAA regulations.

Matt Freemann

Lacano Invs., LLC v. Balash, 765 F.3d 1068 (9th Cir. 2014) (holding that the Eleventh Amendment barred patent owners' action for declaratory judgment against Alaska state officials for the ownership of streambeds because it was the functional equivalent of an action to quiet title).

The federal government issued land patents to Lacano Investments, LLC, Nowell Avenue Development, and Ava L. Eads (collectively, "Patent Owners") before Alaska joined the Union in 1959. Patent Owners alleged that the land patents gave them ownership of particular streambeds in Alaska. However, the Alaska Department of Natural Resources ("the Department") contended that the streambeds were "state-owned." The Department based this contention on its determinations in 2010 and 2011 that the associated waterways were first navigable in 1959 and continued to be navigable. Further, the Submerged Lands Act of 1953 grants the state title and ownership of lands beneath navigable waters.

After the Department notified Patent Owners of its determination, Patent Owners argued that their title was unaffected by the navigability determination. Patent Owners relied on a different section of the Submerged Lands Act, under which streambeds granted by federal patents prior to statehood do not transfer to the state upon joining the Union. Patent Owners subsequently sued the Department, seeking (i) a declaratory judgment stating that the navigability determinations violated the Submerged Lands Act and (ii) an injunction barring the Department from claiming title to the lands beneath the waterways. The United States District Court for the District of Alaska (“district court”) dismissed the complaint for lack of subject matter jurisdiction. Patent Owners appealed to the United States Court of Appeals for the Ninth Circuit (“court”).

The court first examined whether the district court’s dismissal for lack of subject matter jurisdiction was appropriate. On a motion to dismiss for lack of subject matter jurisdiction, courts must accept all factual allegations in the complaint as true. Patent Owners alleged in their complaint that the streambeds were not submerged or state-owned and argued that the court was required to accept this allegation as true. The court held this was not a factual allegation but a legal conclusion, and thus did not accept it as true. The court then looked beyond the complaint to extrinsic evidence of the Department’s claim to the streambeds. Specifically, it examined letters attached to the complaint in which the Department demonstrated Alaska’s claim of ownership to the lands in dispute. Accordingly, the court held that the district court’s dismissal for lack of subject matter jurisdiction was appropriate.

The court then considered whether the Eleventh Amendment’s provision of sovereign immunity barred Patent Owners’ action, and found in the affirmative. The Eleventh Amendment prohibits certain suits brought against a state by an individual without the state’s consent. However, the *Ex parte Young* doctrine allows actions where an individual seeks prospective or injunctive relief against state officials who would have to implement a state law that is inconsistent with federal law.

The court held that Patent Owners’ action did not fall within the *Ex parte Young* exception and was therefore barred by the Eleventh Amendment. Binding on this issue was *Idaho v. Coeur d’Alene Tribe of Idaho*, in which the Coeur d’Alene Tribe (“Tribe”) sued the State of Idaho for ownership and use of land under navigable riverbeds within the boundaries of the Tribe’s reservation. The United States Supreme Court (“Court”) held in *Coeur d’Alene* that the Eleventh Amendment barred the suit because the Tribe was seeking close to the functional equivalent of an action to quiet title, and because the Tribe’s identity as a sovereign nation further implicated Idaho’s sovereign interests. The Court held that federal courts lack jurisdiction over all actions where a plaintiff seeks relief that is close to the functional equivalent of a quiet title and dismissed the Tribe’s claim.

The court in this case found that, like the Tribe in *Coeur d’Alene*, Patent Owners’ claim was the functional equivalent of a quiet title because they wanted full enjoyment and use of the streambeds. Finding that this case presented the same issues as *Coeur d’Alene*, the court affirmed the district court’s judgment, but did not affirm its reasoning. Specifically, it determined that the district court’s attempt to assess the State of Alaska’s interest in the streambeds was not necessary, and that Patent Owners’ claim should be dismissed simply because

it was “close to the functional equivalent” of a quiet title action.

The court turned next to Patent Owners’ three counterarguments. Patent Owners first alleged that *Coeur d’Alene* was no longer good law, and that the court should have applied the Supreme Court’s recent “straightforward inquiry” analysis in *Verizon Maryland, Inc. v. Public Service Commission of Maryland* to determine whether the *Ex parte Young* doctrine exempted their action from the Eleventh Amendment prohibition. In *Verizon*, the Court directed lower courts to conduct a direct assessment of whether a complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective. While the court acknowledged the tension between the “straightforward inquiry” and the holding in *Coeur d’Alene*, it held that *Coeur d’Alene* remained binding. In so concluding, the court noted that *Verizon* did not overturn *Coeur d’Alene* and that a more recent Supreme Court decision affirmed *Coeur d’Alene*’s core holding on the issue.

Patent Owners next alleged that their case was the exact opposite factual situation of *Coeur d’Alene*. Patent Owners argued that the Tribe in *Coeur d’Alene* sought to divest Idaho’s longstanding title, whereas Alaska sought to divest the Patent Owners’ alleged longstanding title in this case. The court rejected Patent Owners’ argument and held that the *Coeur d’Alene* decision relied on the principle that submerged lands beneath navigable waters are tied in a unique way to sovereignty, regardless of the length of the state’s claim to title.

Lastly, Patent Owners alleged that their case differed from *Coeur d’Alene* because the Tribe had independent sovereign authority such that its ownership of the land would effectively diminish Idaho’s regulatory authority. Patent Owners argued that, because they lacked independent sovereign authority, their ownership of the streambeds in question would not threaten Alaska’s regulatory power. However, the court held that the identity of the Tribe was not dispositive in *Coeur d’Alene*, as the Supreme Court in that case had already made its decision when it raised the further impacts to state sovereignty. In so concluding, the court noted that, like the land in *Coeur d’Alene*, the streambeds in this case had a unique legal status and state ownership was necessary for sovereignty.

Accordingly, the court affirmed the district court’s dismissal of Patent Owners’ claim.

Daphne Hamilton

Natural Res. Def. Council v. Jewell, 749 F.3d 776 (9th Cir. 2014) (holding that, because the Bureau of Reclamation had some discretion in renewing water contracts in a way that would benefit the threatened delta smelt, section 7(a)(2) of the Endangered Species Act required the agency to consult with the Fish and Wildlife Service prior to renewing the contracts).

In 2008 the Natural Resources Defense Council and the Metropolitan Water District of Southern California (collectively, “environmental groups” or “groups”) filed a complaint in the United States District Court for the Eastern District of California (“district court”) alleging that the Bureau of Reclamation (“Bureau”) violated section 7(a)(2) of the Endangered Species Act (“ESA”). The environmental groups argued that the Bureau failed to consult with the Fish and Wildlife Service (“FWS”) regarding the impact of various water contracts on the delta smelt, a threatened species living in the California River