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Pyramid Lake Paiute Tribe of Indians v. Nevada, 724 F.3d 1181 (9th Cir. 2013)

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simply as a means to a beneficial end. Moreover, the license itself limited Casitas's right to an enumerated list of beneficial uses, mere storage not among them.

Casitas also asserted that its takings claim began to accrue the moment NMFS required Casitas to divert water through the fish ladder and that such regulatory action gave rise to its takings claim. However, the court held that a physical takings claim only accrues when the physical act constituting the taking occurs, not at the time of the regulatory action that could potentially cause a taking. Under this rubric, Casitas would have to show that the fish ladder diversion physically impinged on its right to beneficial use, that is, its right to deliver water to its customers. Because Casitas made no such showing, the court affirmed the trial court's dismissal of Casitas' takings claim as not ripe.

In conclusion, the Court of Appeals held that California water law limits a licensee's compensable water right to the right to beneficial use. The court held that Casitas's takings claim was therefore not ripe because a governmental action physically impinging on its right to beneficial use had not yet occurred. The court affirmed the trial court's decision to dismiss Casitas's complaint without prejudice.

Nathanial C. Brown

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pyramid Lake Paiute Tribe of Indians v. Nevada, 724 F.3d 1181 (9th Cir. 2013) (holding diversion of water to wetlands for the preservation of waterfowl habitat is not "irrigation" within the meaning of a decree governing water rights but, rather, constituted a wildlife use).

The Truckee and Carson Rivers flow through the Truckee River Basin. The flow from the Truckee River terminates in Pyramid Lake, where it provides the sole source of water to the lake. The lake lies entirely within the Paiute Tribe's ("Tribe") reservation. Under the authority of the Reclamation Act of 1902, the federal government initiated the Newlands Project ("Project") in the early 20th century. The Project diverted water from the Truckee and Carson Rivers to irrigate a substantial amount of land in order develop western agriculture and encourage homesteader settlement.

The Nevada Department of Wildlife ("NDOW") and the Nevada Waterfowl Association ("NWA") submitted an application to the State Engineer ("engineer") to transfer both consumptive and non-consumptive water rights from agricultural land in the Project to a wetland located at the end of the Carson River. The objective of the transfer was to support the growth of plants used as wildlife habitat. If approved, the demand for water from the Truckee River would increase, thereby reducing the water flow into Pyramid Lake. The Tribe and the United States disputed the application, contending that the intended use was not irrigation within the meaning of the Alpine Decree ("decree"), which governs water rights in the Project. The decree does not permit transfer of non-consumptive portion of water rights for a use other than irrigation.

The issue was whether the NDOW and NWA's proposed use constituted irrigation as defined by the decree. The NDOW and NWA argued that the intended water use constituted irrigation because the water would support plant growth. The Tribe and United States claimed that NDOW and NWA did not seek to transfer the rights for irrigation purposes but rather for the purposes of sustaining wildlife. The engineer approved the transfer application because the engineer found that the proposed water use involved plant growth, which constituted irrigation use. The Tribe appealed to the District Court for the District of Nevada ("district court"). The district court disagreed with the engineer and found that the proposed water diversion for waterfowl habitat was not included in the decree's definition of irrigation. The NDOW and NWA appealed to the Court of Appeals for the Ninth Circuit ("court").

The court first noted that the Tribe established a cognizable injury; the water flow into Pyramid Lake is essential to the Tribe's cultural and economic life. The court noted that irrigation use as stated in the decree was only applicable to agricultural uses, specifically uses to grow cash crops and pasture. The NDOW and NWA were unable to prove otherwise. The decree also incorporated portions of Nevada law, including the Nevada water code ("code"). The code defines "wildlife purposes" to include the establishment and maintenance of wetlands. The court noted that the wildlife purposes definition is precisely what the NDOW and NWA sought to accomplish with the water right transfer. Both the decree and code discuss irrigation solely within the context of agriculture, and both distinguish agricultural uses from wildlife purposes; neither indicates that a water transfer application to sustain wildlife habitat constitutes irrigation.

Accordingly, the court held the district court correctly concluded that the proposed water diversion for waterfowl habitat was not irrigation as defined by the decree. The court affirmed the district court's judgment.

Meghan Leemon

Firebaugh Canal Water Dist. v. United States, 712 F.3d 1296 (9th Cir. 2013) (holding the Department of the Interior is only required to provide drainage for lands within the San Luis Unit, has discretion to choose a drainage solution, and is not liable under the Federal Tort Claims Act for failing to provide drainage to downslope lands).

In 1960, Congress passed the San Luis Act ("Act"), which authorized the Department of the Interior ("Interior") to create and maintain the San Luis Unit ("Unit"). The Unit was to provide irrigation water to 500,000 acres of land in three California counties as part of the Central Valley Project, the largest water reclamation project in the nation. The Act required the Interior to construct a dam, reservoir, pumping plants, drains, and other facilities in the Unit. Concerned that the Unit would increase regional drainage requirements, Congress authorized the Interior to construct drainage facilities to serve the general areas affected by the Unit. Under this authority, the Interior began constructing an interceptor drain. The Unit started making water deliveries in 1967.

However, the inability of federal and state governments to agree on environmental standards prevented the Interior from completing the endpoint of