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MONTANA

W. Mont. Water Users Ass'n v. Mission Irrigation Dist., 299 P.3d 346 (Mont. 2013) (holding (i) the district court improperly issued a writ of mandate and injunction pertaining to a water use agreement on an issue the parties did not raise, and (ii) state law did not require irrigation districts to seek member and judicial approval of a water use agreement to settle the rights of water users on Indian reservation lands).

The Hellgate Treaty of 1855, signed by the United States and the Confederated Salish and Kootenai Tribes (“Tribes”), created the Flathead Indian Reservation in Montana. In 1908, Congress directed the Secretary of the Interior to construct the Flathead Indian Irrigation Project (“FIIP”) to deliver irrigation water to irrigable lands on the Flathead Reservation. Under the Hellgate Treaty, the Tribes claimed aboriginal water rights to FIIP irrigation water. Landowners who comprise Western Montana Water Users Association (“Water Users”) also claimed rights to FIIP water for irrigation. Through a Reserved Water Rights Compact Commission, the State of Montana, the Tribes, and the United States proposed a compact to settle the Tribes’ water rights claims. The Mission Irrigation District, Jocko Valley Irrigation District, Flathead Irrigation District, and Flathead Joint Board of Control (collectively “Irrigation Districts”) were not parties to the compact. However, as an appendix to the compact the United States, the Tribes, and the Irrigation Districts proposed a water use agreement that would settle the rights of irrigators to receive FIIP irrigation water on the reservation.

The Water Users brought this action against the Irrigation Districts seeking to require compliance with MONT. CODE ANN. §§ 85-7-1956 and -1957 (2013) before entering into the water use agreement with the Tribes and the United States. If applicable, sections 85-7-1956 and -1957 would require the Irrigation Districts to submit the water use agreement to a member vote and judicial review.

On December 14, 2012, the District Court for the Twentieth Judicial District (“district court”) issued an alternative writ of mandate requiring the Irrigation Districts either to comply with sections 85-7-1956 and -1957 or to submit a brief detailing why they need not comply. The Irrigation Districts submitted a brief that argued those sections did not apply to the water use agreement. On February 14, 2013, the district court conducted a hearing to evaluate the applicability of sections 85-7-1956 and -1957 to the water use agreement. After considering the arguments of both parties, the district court found the agreement was beyond the Irrigation Districts’ authority, rendering the question of the applicability of the statutes moot. Accordingly, the district court issued a superseding writ of mandate and enjoined the Irrigation Districts from entering into the water use agreement. The Irrigation Districts appealed to the Supreme Court of Montana (“Court”).

The Court first determined whether the district court properly granted the writ of mandate and injunction. The district court based the injunction solely on its determination that the water use agreement exceeded the Irrigation Districts’ authority because the agreement would give individual irrigators’ water

rights to the Tribes without compensation. However, at the time of the hearing, the State of Montana, the Tribes, and the United States were still negotiating ownership of the FIIP water rights. The Court held the district court's determination that the water use agreement exceeded the Irrigation Districts' authority was improper because it was unclear whether the water use agreement would actually take away water rights given that none of the FIIP rights were yet determined.

The Court further noted that the Water Users based their complaint entirely on the applicability of sections 85-7-1956 and -1957, an issue the district court ultimately did not address. Neither the Water Users nor the Irrigation Districts questioned the scope of the Irrigation Districts' authority before the district court. The Court noted that the district court therefore based its writ of mandate and injunction on an issue that none of the parties briefed or argued. Further, the Court held that the district court's injunction against the Irrigation Districts was improper because the Water Users never requested an injunction prohibiting the water use agreement in their request for relief. The Court accordingly vacated the district court's writ of mandate and injunction, thereby restoring the district court's alternative writ of mandate, which held the Irrigation Districts must comply with sections 85-7-1956 and -1957.

The Court next determined whether, as the alternative writ held, sections 85-7-1956 and -1957 imposed a clear legal duty on the Irrigation Districts to seek member approval and judicial review of the Water Use Agreement. Using the plain language of the entire statute, the Court examined sections 85-7-1956 and -1957 to determine their applicability to the water use agreement.

The Water Users argued the entire statute's provisions applied to contracts with the United States for loans of money, construction work, or repair work, and that the statutes applied to the water use agreement based on the latter two qualifications. The Irrigation Districts contended that the statute was not applicable to the water use agreement because, by reading the statute as a whole, those two provisions only regulated contracts involving a loan of money.

After examining each section of the statute, the Court held that sections 85-7-1951 to -1958, passed later than the rest of the statute, applied only to contracts that involve a loan of money. Although other provisions in the broader statute, specifically section 85-7-1906, authorized the Irrigation Districts to enter into any type of contract with the United States, the Court found that section 85-7-1958 provided that sections 85-7-1951 to -1958 should not limit the Irrigation Districts' authority to enter into agreements with the United States under other applicable statutes. The Court emphasized that the Water Users' broader interpretation of the statute would render sections 85-7-1958 meaningless.

Although the parties disagreed as to statutory interpretation, they agreed that the Water Use Agreement did not involve a loan of money. Accordingly, the Court held that sections 85-7-1956 and -1957 did not apply to the water use agreement, meaning the Irrigation Districts did not need to seek member approval or judicial review.

Consequently, the Court dissolved the writ of mandate and injunction and reversed the district court's previously issued alternative writ of mandate.