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Brown v. City of Eugene, 279 P.3d 298 (Or. Ct. App. 2012)

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Brown v. City of Eugene, 279 P.3d 298 (Or. Ct. App. 2012)

The federal district court accordingly dismissed the Pyramid Lake Paiute Tribe's federal appeal ("*Alpine* decree").

The district court (in Churchill County) then heard this case and ruled that the location of the applicant's water rights determined which court had jurisdiction to hear an appeal from a State Engineer decision. Therefore, the district court lacked subject matter jurisdiction over Appellants' appeal and could not change the venue.

Appellants eventually appealed the district court's decision to the Supreme Court of Nevada. But in the meantime, the Ninth Circuit Court of Appeals vacated *Alpine*, based on *United States v. Orr Water Ditch Co.*, 600 F.3d 1152 (9th Cir. 2010). In *Orr*, the Ninth Circuit rejected the proposition that the location of an applicant's water rights determines jurisdiction under the Statute. The Supreme Court of Nevada then reviewed Appellants' case *de novo* to determine whether the district court indeed had subject matter jurisdiction over the case in light of the Ninth Circuit's decision to vacate *Alpine*.

The Court began by analyzing the language of the Statute, in particular the phrase "matters affected or a portion thereof." It held the phrase signified multiple potential forums and that if "a portion" of the "matters affected" is located in a certain county, that county was a proper forum for all of the "matters affected." Moreover, the Court noted the district court's decision was at odds with *Orr*, which, while not binding, proved persuasive. The Court ultimately held that subject matter jurisdiction was not limited to the location of an applicant's water rights and the district court erred in dismissing Appellants' appeal for lack of subject matter jurisdiction.

Accordingly, the Court vacated and remanded the case to the district court.

Leigh Auerbach

OREGON

Brown v. City of Eugene, 279 P.3d 298 (Or. Ct. App. 2012) (holding that the term "water service" in a city charter granted a city council control over extensions of water service to end users but not over wholesale transfers of water).

In April 2010, the Eugene Water and Electric Board ("EWEB") contracted with the City of Veneta ("Veneta") for Veneta to purchase water from EWEB. The contract specified that EWEB would not provide service directly to customers in Veneta; the sale would be of "surplus water" and characterized as "wholesale." The point of delivery of the approximately 150 million gallons per year under the contract was technically located within Eugene City limits. EWEB and Veneta each agreed to extend their respective water transmission facilities to the point of delivery. In accordance with Oregon law, EWEB petitioned for judicial validation of the contract. Judicial validation of the contract was also a precondition to EWEB performing any of its contractual obligations. The Oregon Circuit Court for Lane County ("trial court") granted motions to intervene by the City of Eugene ("Eugene") and other interested parties (collectively, "Intervenors").

Intervenors moved for summary judgment, arguing that the proposed contract between EWEB and Veneta violated a section of the Eugene Charter (“Charter”) that vests the Eugene City Council with the sole authority to approve sales of water. EWEB also moved for summary judgment, arguing that, other than the City Council’s control over the extension of water service, the same provision of the Charter grants the EWEB full authority over the water utility, including wholesale transactions. The trial court granted EWEB’s motion for summary judgment and Intervenors appealed to the Court of Appeals of Oregon (“appeals court”).

On appeal, Intervenors argued that the term “water service” encompassed the sale of wholesale water to other entities, regardless of which entity distributed that water to end users. Accordingly, the appeals court focused its review on interpreting the meaning of section 44(3) of the Charter, which governed EWEB’s authority over water transfers. The appeals court first established that section 44(3) granted EWEB authority over wholesale water sales unless those sales constituted an extension of water service. The parties agreed on the meaning of “extension,” but disagreed on the meaning of “water service.”

The appeals court next endeavored to define the meaning of “water service.” The appeals court discounted the varied and numerous dictionary meanings of “service,” and instead looked to the definition of “service” voters relied on when they voted for section 44(3) in 1976. From the voters’ perspective, the appeals court stated, “water service” meant the provision of water to the end user, which was consistent with EWEB’s argument. The appeals court found it unlikely that voters would have understood water service to encompass the wholesale transfer of water from one utility or entity to another.

Acknowledging the Charter language standing alone still did not provide a concrete answer to the meaning of “water service,” the appeals court looked to the context of the Charter provision. The appeals court reviewed the statutory framework in existence at the time of the Charter vote. It found that in 1969, the Oregon State legislature created three local government boundary commissions and used the word “service” in a way that supported EWEB’s proposed definition of service. Therefore, statutory references to “service” in the 1969 legislation reflected the general understanding of “service” at the time to mean service to individuals and entities, not wholesale to utilities and municipalities.

Last, the appeals court reviewed the history of the Charter’s enactment, which included a statement in the voters’ guide that the City Council’s authority over the extension of water service could be exercised as a tool for land use planning and control of urban sprawl. The appeals court further reasoned that its interpretation of “water service” would still provide the City Council with some measure of control over land use and urban sprawl.

Accordingly, the appeals court held that EWEB had authority to enter into the contract with Veneta without first obtaining approval from the City Council and that the trial court properly validated the contract.

Darin Smith