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Klamath Irrigation District v. United States, 2011 WL 537853 (Fed. Cir. 2011)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Klamath Irrigation District v. United States, 2011 WL 537853 (Fed. Cir. 2011) (holding (1) that further proceedings consistent with a certified decision from the Oregon Supreme Court are necessary to ascertain any property interests that farmers and irrigation districts acquired in Klamath Project water in order to determine whether a taking occurred, and (2) that courts should consider the impossibility of performance as a factor to be taken into account under the sovereign acts doctrine).

The Federal Bureau of Reclamation (“Bureau”) manages the Klamath Project, which stores and supplies water for farmers, irrigation districts, and Federal wildlife refuges in the Klamath River Basin. As a result of drought conditions, the Bureau withheld delivery of water to farmers and irrigation districts in order to make water available for three species of endangered fish. The farmers and irrigation districts (“Plaintiffs”), who claimed a property right in the water, brought an action in the United States Court of Federal Claims (“claims court”) alleging that the United States took their property in violation of the Fifth Amendment, and in the alternative, that the United States breached its contractual obligation to deliver the water. Regarding the takings claim, the claims court granted the government summary judgment because Plaintiffs failed to assert a cognizable property interest in Klamath Project water. With respect to the breach of contract claim, the claims court found that the sovereign acts doctrine foreclosed the government’s liability to plaintiffs. The claims court entered judgment in favor of the government and dismissed the complaint.

Plaintiffs timely appealed to the United States Court of Appeals for the Federal Circuit (“circuit court”). The circuit court found that Oregon property law was germane to the question of whether plaintiffs possessed property rights in the Klamath Project water. Therefore, the court certified three questions to the Oregon Supreme Court.

The circuit court’s first question was whether, under the 1905 statute, the Oregon legislature intend to preclude persons putting the water to beneficial use from acquiring a property interest in the water right? The court’s answer to this question was no, because after the final appropriation required by the statute occurred, the United States was deemed the “appropriator” of the water and thus held the water in trust for the Plaintiffs, which created a derivative property interest.

The circuit court’s second question was whether beneficial use alone is sufficient to acquire a beneficial or equitable property interest in a water right to which another person holds legal title. The court again answered no, because it has previously held that beneficial use is a necessary, but not sufficient condition for obtaining a property

interest in a water right held by another person. Whether a property interest exists also depends on the nature of the relationship between the appropriator and the user of the water right, as well as any contractual agreements between them.

The Federal Circuit's third question was, with respect to surface water rights appropriated under Oregon law prior to February 24, 1909, whether Oregon State law recognized any property interest in the use of the Klamath Basin water that is not subject to adjudication in the Klamath Basin Adjudication? The court's answer to this question was yes. The court concluded that because water right adjudication is comprehensive, persons holding derivative rights are not claimants within the meaning of Oregon statute and need not file a claim in the water rights adjudication.

Plaintiffs argued that, in light of the Oregon Supreme Court's answers, the Federal Claims Court decision as to the takings claim was based on two erroneous rulings: (1) that Plaintiffs did not have a property interest under Oregon law; and (2) that the 1905 Act precluded Plaintiffs from acquiring property interests in the water. Plaintiffs argued that there is no evidence in the record that they bargained away their vested water rights. In support of this argument Plaintiffs turned to a statement in the Oregon Supreme Court's answer to question two that discusses whether Plaintiffs had contractually given away any of their water rights could not be determined because the court lacked records of contracts to that affect. Plaintiffs also argued that the Oregon Supreme Court's answer to the third question compels the conclusion that the property rights at issue were not involved in the Adjudication.

The United States argued that by restating the second certified question and answering it in the negative, the Oregon Supreme Court rejected the Plaintiffs' arguments on appeal because they were inconsistent with the three-factor test for property rights advanced by the Oregon Supreme Court. Therefore, a remand to consider the three-factor test is inappropriate because the test rests on a theory that is fundamentally different from the one previously advanced by Plaintiffs.

The circuit court concluded that the Oregon Supreme Court's answers to the certified questions warranted further proceedings. The circuit court did not agree with the United States that Plaintiffs should be barred from proceeding under the Oregon Supreme Court's three-factor test because Plaintiffs had consistently argued that property rights to project water arose by operation of Oregon state law. Further, the Oregon Supreme Court's answer to the third question made it clear that Plaintiffs may assert property interests in the project water without adjudicating the claims.

Regarding the takings claims, the circuit court remanded to the claims court for: (1) determination, based on the Oregon Supreme Court's answers to the certified questions, of any outstanding property interest; and (2) determination on the merits of all surviving takings

claims. In doing so, the circuit court directed the claims court to proceed by applying the three-factor test articulated by the Oregon Supreme Court, with special focus on the third factor. It is the government's burden to show with specificity how the rights of one or more Plaintiffs have been clarified, redefined, or altered.

As to the breach of contract claims, Plaintiffs argued that the claims court erred in finding that impossibility of performance is not a threshold requirement the government must meet when asserting the sovereign acts defense. The United States responded that the claims court correctly held that the sovereign acts doctrine provides a complete defense, and that the ESA compelled the Bureau to reduce the amount of water delivered to the farmers and irrigation districts.

The court first outlined the two-part test that must be satisfied in order for the United States to invoke the sovereign acts defense: First, the court asks whether sovereign act is simply one designed to relieve the government of its contractual duties, or is it a genuinely public and general act that only incidentally falls upon the contract? If the act is sufficiently general and public, the court will next ask whether that act renders the performance of the act impossible under ordinary principles of contract law.

The circuit court found that although the claims court did not err in ruling that the Bureau's withholding of the water was a general and public act, the claims court failed to undertake the second part of the sovereign acts doctrine, which implicates the impossibility of performance component of the sovereign acts defense.

Accordingly, the court remanded the case so that the government may carry the burden of showing that performance of the contracts at issue was rendered impossible.

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STATE COURTS

CALIFORNIA

Sonoma Cnty. Water Coal. v. Sonoma Cnty. Water Agency, 116 Cal. Rptr. 3d 616 (Cal. Ct. App. 2010) (holding that a county water agency's management plan was supported by substantial evidence and did not need an alternative plan for diverting water under California's Urban Water Management Planning Act).

California's Urban Water Management Planning Act ("UWMPA") required California urban water suppliers to adopt water management plans every five years. In this case, the Sonoma County Water