

9-1-2008

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Mary Kate Finnigan, Court Report, Fort Vannoy Irrigation Dist. Water Res. Comm'n, 188 P.3d 277 (Or. 2008), 12 U. Denv. Water L. Rev. 292 (2008).

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OREGON

Fort Vannoy Irrigation Dist. v. Water Res. Comm'n, 188 P.3d 277 (Or. 2008) (holding a landowner lacked authority to change the points of diversion associated with water rights set forth in two certificates without the consent of an irrigation district because the district held the water rights in trust for the beneficiary landowner).

Ken-Wal Farms ("Ken-Wal"), a landowner and member of the Fort Vannoy Irrigation District ("District"), raises its crops using water delivered through the District's irrigation system pursuant to two water rights certificates the State Engineer issued to the District in 1930. In November of 1999, Ken-Wal applied to the Water Resources Department ("Department") to change the points of diversion. The District refused to give its consent and contended that the Department could not approve the application without the District's consent because Oregon Revised Statute § 540.510(1) provided only the "holder of any water right subject to transfer may . . . change the use and place of use, the point of diversion or the use theretofore made of the water in all cases without losing priority of the right theretofore established." Despite the District's objection, the Department approved Ken-Wal's application without the District's consent. The Oregon Court of Appeals reversed the Department's order, concluding that the "holder" of the water right is the party to whom the State Engineer issued the water right certificate.

The Oregon Supreme Court allowed review to consider the meaning of the phrase "holder of any water use subject to transfer" within Oregon Revised Statute § 540.510(1). Ken-Wal argued that it was the holder of the water rights because it was the party who put the water to beneficial use, and it owned the land appurtenant to the water. On the contrary, the District argued for its ownership of the water rights based on the fact the State Engineer issued the water right certificates to the District, and the existence of trustee-beneficiary relationship between the District and its members.

After concluding that the phrase "the holder of any water use subject to transfer" referred to a party with an ownership interest in the water rights, the court addressed the parties' four arguments. First, the court considered the issuance of the water right certificates to the District and concluded the party to whom the water right certificate was issued was the party who had a vested ownership interest in the right. In this case, because the District completed the statutory procedure for the issuance of the certificate, the District became the "holder" of the water rights established in the certificates. The District's second argument was that the issuance of the certificate to the District created a trustee-beneficiary relationship between the District and its members. Oregon Revised Statute § 545.253 provides legal title to water rights acquired through a certificate from the Water Resources Commission

“shall immediately vest in the irrigation district and shall be held by it in trust for and hereby is dedicated and set apart to the uses and purposes set forth in the Irrigation District Law.” The court concluded that in order to make the foregoing language consistent with the statute, the court would construe the phrase “holder of any water use subject to transfer” as referring to the District as the “holder.”

Next, the court considered Ken-Wal’s two additional arguments. First, it dismissed the contention the “holder” of the water right was the one who put the water to beneficial use. The court stated that beneficial use was just one of several actions required before a certificated water right could come into existence. Thus, Ken-Wal’s status as the sole beneficial user of the certificated water was insufficient to make it the “holder.” The court also noted that in similar disputes it held parties could accomplish beneficial use an agency relationship such as the one between Ken-Wal and the District. Second, the court considered the argument that Ken-Wal was the “holder” because it owned the land to which the certificated water rights were appurtenant. The appurtenant land argument failed because the court concluded that nothing in Oregon water law prevented a situation where a certificated water right resided with one party, while the ownership of the appurtenant land resided with another. Therefore, Ken-Wal’s ownership of the appurtenant land did not necessarily entail ownership of the certificated water rights benefiting the land.

The court held the District was the “holder” identified in the statute that allowed the “holder of [a] water use subject to transfer” to change points of diversion. Because Ken-Wal was not the “holder” of the water rights established in the two certificates, it was not authorized to change the points of diversion without the consent of the District. Accordingly, the court affirmed the appellate court’s ruling.

Mary Kate Finnigan