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Apland v. Butte County, 716 N.W.2d 787 (S.D. 2006)

Jonathan P. Long

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corporates traditional riparian principles, under which water rights are derived from ownership of waterfront property, based on use not possession, protected from injury from other users, and obtained by the state solely through eminent domain. The court, therefore, interpreted the grant as having conveyed only the right to use the water utilized by the state to supply the canal, and incapable of transferring riparian rights necessary for subsequent sales. However, Akron's subsequent land acquisitions, including Lake Rockwell, vested it with riparian rights, and the ability to sell water to other towns.

The court next reviewed the reasonableness of Akron's use of the Cuyahoga, balancing the effect of the Akron's sales of water to other towns and its releases to the river from Lake Rockwell. The County presented evidence regarding the discharges necessary for preservation of the river's aquatic life and maintaining EPA water standards, and sought a declaration forcing Akron to release 8.5 to 10.9 MGD. Akron argued that the changing and competing nature of riparian rights made any declaration merely hypothetical, and that the appellate court erred in remanding for a declaratory judgment. In reviewing the record, the court noted that Akron's 1998 lease with ODNR stipulated that it release 3.5 MGD but that it regularly exceeded the obligation and released 5.0 MGD. Moreover, the County presented expert testimony estimating the aggregate flow to be 8.1 to 9.5 MGD, resulting from a 3.1 to 4.5 MGD unintentional release.

The Supreme Court of Ohio held that Ohio conveyed only the right to use the water it held title to at the time of the transfer, and that Ohio had no rights in the Cuyahoga at the time of the 1911 deed. Therefore, Akron's water rights in the Cuyahoga were limited to rights gained through its subsequent purchases of riparian lands. Furthermore, the court affirmed and modified the court of appeals decision to remand for issuance of a declaratory judgment regarding Akron's reasonable use of the Cuyahoga River. On remand, the court ordered the trial court to issue a declaratory statement holding Akron's use of the Cuyahoga to be reasonable insofar as it maintains an aggregate release flow from Lake Rockwell between 8.1 and 9.5 MGD.

Christian Troncoso

SOUTH DAKOTA

Apland v. Butte County, 716 N.W.2d 787 (S.D. 2006) (holding Butte County Director of Equalization's methodology for assessing the value of rangeland was clearly erroneous when it failed to consider the value of appurtenant and nontransferable water rights).

John Apland and other Butte County landowners (collectively "Apland") appealed the Butte County Board of Equalization's decision regarding Apland's rangeland property assessments for the 2002 and

2003 tax years. The Fourth Judicial Circuit Court, Butte County, affirmed the Board's decision, finding that the Director of Equalization ("Director") properly assessed the value of Apland's rangeland property. On appeal to the Supreme Court of South Dakota, Apland asserted that the Director assessed his rangeland at substantially higher values than other rangeland with similar market value by failing to consider appurtenant and nontransferable water rights, thereby violating the Constitutional requirements of equality and uniformity.

In determining market values for rangeland property tax assessments, the Director considered factors such as location, soil quality, time of sale, use of property, and climate conditions. Using these factors, the Director determined both the median county market value and neighborhood market values. The Director determined that the market value for rangeland property in Apland's neighborhood deviated from the median county market value by more than ten percent. South Dakota Codified Laws § 10-6-33.6 allows the Director to establish separate market values per acre for land within the county that deviates by more than ten percent from the county's median market value. Therefore, the Director established separate market values per acre for Apland's neighborhood. Apland's property did not have appurtenant or nontransferable water rights, but the Director's methodology resulted in a higher tax assessment for Apland's property than for other rangelands with appurtenant and nontransferable water rights. Throughout this process, the Director's methodology failed to consider the value of appurtenant and nontransferable water rights.

The court evaluated the Director's methodology to determine whether it was clearly erroneous to use sales of land with appurtenant and nontransferable water rights, without adjusting for the market value of water rights, when determining the median market value and deviations from that value. The court first reiterated the constitutional principle that property valuation for tax purposes must reflect equally and uniformly the property's true and full value. Next, the court noted that water rights increase the value of land by increasing the land's irrigability. The court found that the Director's methodology resulted in higher market values for properties without water rights than for similar properties with appurtenant and nontransferable water rights. These discrepancies in market value were a result of the Director's failure to consider appurtenant and nontransferable water rights. Because of these discrepancies in valuation, the court held that the Director's methodologies violated the constitutional requirements of equality and uniformity. Accordingly, the court reversed the trial court's affirmation of the Director's methodologies and remanded.

Jonathan P. Long