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Colvin Cattle Co. v. united States, No. 03-1942L, 2005 U.S. Claims LEXIS 267 (Fed. Cl. 2005)

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sen nor Deverman were aware of the contamination, Hansen's claim had not accrued. Furthermore, the court held that due to the nature of a contract for deed and the specific nature of Hansen's agreement with Wick, Hansen had a sufficient interest in the Ranch. Finally, the court rejected the Forest Service's argument that because the Ranch still had three uncontaminated wells and enough water to operate, Hansen's claim was not yet ripe. The court held that it was reasonably foreseeable that the contamination would spread to the remaining wells, and therefore Hansen's claim was ripe for adjudication.

In conclusion, the court determined a trier of fact could reach the conclusion that the Forest Service contaminated the Ranch's ground water and that such contamination may constitute a Fifth Amendment Takings claim. The court also determined that Hansen had a viable interest in the Ranch at the time of the taking. The court denied the Forest Service's motions for summary judgment on standing and ripeness and granted Hansen's partial motion for summary judgment that the taking occurred when Hansen learned about the contamination.

Brian Stewart

Colvin Cattle Co. v. United States, No. 03-1942L, 2005 U.S. Claims LEXIS 267 (Fed. Cl. 2005) (holding state water rights did not create a property right to graze cattle on federal public land and BLM's denial of an application to graze cattle on federal lands was not a taking of water rights).

In 2005, Colvin Cattle Co. ("Colvin"), the owner of 520 acres near the publicly-held Montezuma Allotment in Nevada ("Allotment"), brought suit against the Bureau of Land Management ("BLM") after BLM denied Colvin's application to graze cattle on the Allotment. Colvin had grazed cattle on the allotment since 1970. Colvin also possessed water rights, which it used to provide water to the cattle. In 1995, Colvin failed to pay grazing fees and BLM cancelled its grazing lease. Over the next few years, BLM issued numerous notices of trespass and intent to remove Colvin's cattle from the Allotment. Colvin appealed BLM's decision first to the agency and then the Interior Board of Land Appeals. BLM issued a final trespass decision in 2003 requiring Colvin to remove all cattle and range improvements, except for wells and other facilities Colvin needed to access its water rights. BLM also granted a lease to a third party, Bud Johns, to graze cattle on the Allotment.

In this suit before the United States Court of Federal Claims, Colvin claimed (1) the denial of its application to graze cattle was a taking of its water rights, and (2) the cancellation of its grazing lease was a breach of contract. Colvin based its takings claim on the belief that a right to beneficial use of water carries an attendant right to graze

cattle on federal land, because grazing is the only beneficial use to which the water can be put. Further, by denying the right to use the land for grazing, the government denied Colvin its right to use its own water. Colvin based its argument on three sources: the Supreme Court decision in *Buford v. Houtz*, Nevada's 1925 Stockwatering Act, and the Mining Act of 1866.

The court in *Buford* recognized that land on the public range can only be subject to the beneficial use of grazing. Based on this case, Colvin argued that a water right carries with it an attendant right to graze cattle on federal land. Thus, Colvin argued the federal government had not created the right to graze cattle on federal land through a permitting process, but instead it was a right under Nevada's appropriation laws. However, the court did not believe the *Buford* decision altered the federal government's ownership and control of public lands.

Second, Colvin's water rights traced back to Nevada's 1925 Stockwatering Act. Colvin argued that through the Act, the state of Nevada recognized a connection between the water rights and the right to graze, and conferred a right to graze on federal lands. However, based on case precedent, the court found the state did not intend to create any right or title to public lands by passing the Act.

Third, Colvin argued its takings claim based on a valid property right, which was a water right confirmed in the Mining Act of 1866, and not on a federal permit or license to graze. However, the court rejected this argument because the Supreme Court interpreted the Mining Act to recognize only two possessory rights: the right to use water on public lands for "mining, manufacturing, or other beneficial purposes," and the right of way for improvements to carry water for those purposes. The Court never recognized grazing as creating a property right.

Finally, Colvin argued BLM had an obligation to prevent Bud Johns' cattle from infringing on Colvin's water rights. However, the court found the federal government could not be responsible for trespass of water rights by a private party.

Because Colvin's water rights did not create a property right to graze cattle on the federal Allotment, the court dismissed the suit and confirmed BLM's right to deny Colvin a grazing permit.

Kathryn Lane Garner

UNITED STATES DISTRICT COURTS

Northwest Env'tl. Advocates v. EPA, No. 03-05760, 2005 U.S. Dist. LEXIS 5373, (N.D. Cal. Mar. 30, 2005) (holding that the Environmental Protection Agency exceeded its authority by promulgating a