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Brady v. Abbott Labs., 433 F.3d 679 (9th Cir. 2005)

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Brady v. Abbott Labs., 433 F.3d 679 (9th Cir. 2005)

required, the Ninth Circuit affirmed the decision of the district court granting the Corps's motion for summary judgment.

Brandon Saxon

Brady v. Abbott Labs., 433 F.3d 679 (9th Cir. 2005) (holding landowner's extraction of ground water to improve the land constitutes a reasonable use and is acceptable even if the extraction proves detrimental to others).

In the fall of 1997, Abbott Laboratories ("Abbott") sought to create an underground storage facility. To further the project, Abbott acquired an emergency permit from the Arizona Department of Water Resources ("ADWR") to remove 2.07 acre-feet of groundwater from the construction site. However, in order to keep the site dry, Abbott had to remove over 120 acre-feet of water. Originally, an onsite basin stored the excess ground water, which was supposed to seep back into ground and recharge the aquifer. However, due to the volume of excess water, Abbott had to remove most of it from the premises. The removal of the groundwater caused a sixteen-foot drop in the aquifer causing Brady's pecan trees to die. The loss of the pecan trees destroyed Brady's farm and business.

Brady ignored the potential claim that Abbott violated the ADWR permit, and instead, filed a negligence and nuisance claim for violation of the reasonable use doctrine. In Arizona, a landowner who removes the water to benefit the development of the land does not violate the reasonable use doctrine. Therefore, because Abbott removed the water to benefit its construction project, even though Brady suffered detriment, Abbott had not violated the reasonable use doctrine. The court held that because Abbott had not violated the reasonable use doctrine, Brady's negligence and nuisance claims failed.

Brian Stewart

United States v. Truckee-Carson Irrigation Dist., 429 F.3d 902 (9th Cir. 2005) (holding that the Pyramid Lake Paiute Tribe's right to apply for a change of water right was limited to that amount of water they had previously used for irrigation, and not the maximum amount they could have used to compensate for transportation losses).

The Pyramid Lake Paiute Tribe of Indians ("Tribe") and the United States, as trustee for the Tribe, applied to the Nevada State Engineer ("Engineer") for an initial adjudication of applications to change the use of two water rights from irrigation to instream use to support the Tribe's fishery. The Engineer issued a ruling that granted the applications in part, but allowed the Tribe to transfer only the acre-