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Walker v. United States, 69 Fed. Cl. 222, (Fed. Cl. 2005)

UNITED STATES COURT OF FEDERAL CLAIMS

Walker v. United States, 69 Fed. Cl. 222, (Fed. Cl. 2005) (granting motion for reconsideration upon finding that water, access and forage rights were legally distinct from surface estate rights determined in a prior action).

Roy and Shellie Walker (the "Walkers") held two grazing allotments for a forty-acre ranch located within the Gila National Forest administered by the United States Forest Service ("Forest Service"). In 1996, the Forest Service terminated the Walkers' grazing permit after the Walkers disregarded Forest Service grazing regulations. The Walkers continued grazing 265 head of cattle on the allotments. The United States filed a complaint in the District Court for the District of New Mexico alleging trespass, damages, unpaid grazing fees and an injunction enjoining the Walkers from grazing cattle. On February 27, 1998, the District Court issued a final judgment finding that the Walkers had no property interest in the surface estate of the allotments. As such, the court enjoined the Walkers from grazing cattle without a permit and ordered removal of all livestock by June 30, 1998.

On February 5, 2004, the Walkers filed a complaint in the United States Court of Federal Claims asserting that the government took their water, access and forage rights without just compensation. The court dismissed the Walkers' claims under the theory that collateral estoppel barred them from relitigating claims alleged in the first cause of action. The Walkers motioned for reconsideration, alleging that water, access and forage rights were legally distinct property interests not included with the previously litigated surface estate rights.

The court found that state and local custom, rather than federal law, governed private water rights on public land. Additionally, it found that under the "implied-reservation-of-water doctrine," the United States did not reserve water for stockwatering purposes when it established the Gila National Forest. Moreover, the court determined the water rights were not appurtenant to the subject allotments because the unity of title prerequisite to appurtenancy never existed. Thus, the court found error in its prior decision and held New Mexico law governed the water rights alleged in the complaint. As such, it found these claims were not collaterally estopped. New Mexico law recognizes appropriative water rights as independent property interests that are not dependent on surface estate ownership.

The court examined New Mexico law and determined that the state recognizes a right-of-way for the maintenance and enjoyment of water rights protected under the Mining Act of 1866. Because the court held water rights were independent from surface rights, it found

the access claim was not collaterally estopped and refrained from analyzing the scope of the right-of-way at this stage of the case.

The court could not identify any New Mexico case law examining the issue of whether New Mexico recognizes a forage right, limited or otherwise, as implicit in a vested water right or a related right-of-way. As such, it deferred the question to the Supreme Court of the State of New Mexico.

Finally, the court examined the issue of whether the just compensation claims violated the Tucker Act's six-year statute of limitations. The court found that a taking occurs when the owner's property use is deprived. The Walkers utilized their appropriative water rights until June 30, 1998 as ordered in the District Court's February 27, 1998 judgment. Accordingly, the court held the statute of limitations did not bar the just compensation claims that accrued no earlier than February 27, 1998.

Michael Graetz

UNITED STATES DISTRICT COURT

Natural Res. Def. Council v. Norton, No. 1:05-CV-01207 OWW TAG, 2006 U.S. Dist. LEXIS 1363 (E.D. Cal. Jan. 5, 2006) (granting intervention by state agencies, managing state-built water projects not adequately represented by existing federal authorities, in actions concerning coordinated water supply management plans).

The California Department of Water Resources ("Department") made a motion to the United States District Court for the Eastern District of California to intervene in a case concerning the coordinated operation of the federally-managed Central Valley Project ("CVP") and the State of California's State Water Project ("SWP"). Both projects divert large volumes of water from the California Bay Delta ("Delta") and use the Delta to store water. The Department manages the SWP and operates diversion facilities in both the southern and northern Delta to divert water for distribution to much of California. The Department and other agencies share certain facilities and coordinate operations with one another. The Operating Criteria and Plan ("OCAP") is the most recent document describing the coordinated management and proposing a number of changes to the operation of the CVP and SWP. The OCAP must comply with the Endangered Species Act ("ESA") after consultation with the United States Fish and Wildlife Service ("USFWS") to ensure that any actions taken in the Delta will not jeopardize the continued existence of any endangered or threatened species.

A coalition of environmental groups including the National Resources Defense Council ("NRDC") brought the original action to