

1-1-2006

In re The Gen. Adjudication of All Rights to Use Water in the Gila River Sys. and Source, 127 P.3d 882 (Ariz. 2006)

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Matthew Smith, Court Report, In re The Gen. Adjudication of All Rights to Use Water in the Gila River Sys. and Source, 127 P.3d 882 (Ariz. 2006), 9 U. Denv. Water L. Rev. 645 (2006).

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Districts”). These contracts govern allocation of Central Arizona Project (“CAP”) water. Pursuant to federal law, the Irrigation Districts subsequently entered into memoranda of understanding with several agricultural landowners within the irrigation districts. This case arose when the Irrigation Districts entered settlement negotiations to exchange debt relief for abrogation of rights to the CAP water. Subsequently, the landowners filed suit for declaratory relief against the Irrigation Districts.

The Pinal County Superior Court held water rights were appurtenant to the irrigated land. Therefore, because the landowners had a vested right to the CAP water, the Irrigation Districts could not alter the rights granted under the memoranda of understanding through alteration of the CAWCD subcontract without the landowners’ consent.

The Arizona Supreme Court overruled the trial court. It held, under the Reclamation Act of 1902, the Boulder Canyon Project Act, and other case law, that the landowners did not have a contract with the Secretary of the Interior and therefore could not establish entitlement to the CAP water. Furthermore, the court held the landowners were not third-party beneficiaries to either the sub-contracts or the master contract and consequently did not have a vested right to the water. Therefore, because the memoranda of understanding between the landowners and the Irrigation Districts did not modify the master or subcontracts and only required that the landowners receive irrigation water, not specifically CAP water, the court determined the landowners did not have a vested right to CAP water.

Furthermore, the court dismissed the landowners’ claim that state law applied because they beneficially applied the water. The court determined different rules apply to Colorado River water due to the large size and multi-state scope; therefore, states could not interfere with associated water contracts and federal law applied. The court denied the landowners’ action for declaratory relief, vacated the lower court’s decision and remanded to the trial court for further proceedings.

Amy Mockenhaupt

In re The Gen. Adjudication of All Rights to Use Water in the Gila River Sys. and Source, 127 P.3d 882 (Ariz. 2006) (affirming and remanding interlocutory appeal from the Superior Court of Maricopa County holding that a water decree in a general stream adjudication had preclusive effect with respect to a river mainstem and no preclusive effect as to the tributaries of the river).

The Gila River (“River”) originates in Western New Mexico and flows across Arizona where it empties into the Colorado River, flowing through arid land that requires irrigation for successful agricultural applications. The San Carlos Apache Reservation and the Gila River

Indian Community ("GRIC") border the River. In the late 1800s, the federal government first considered building a dam to store water for the San Carlos Apache Tribe ("Tribe"), GRIC, and non-Indian landowners in the Florence-Casa Grande area. However, Congress did not appropriate funds for the San Carlos Irrigation Project ("San Carlos Project") involving the construction of the Coolidge Dam on the River until 1924. To facilitate development of the San Carlos Project, the United States entered into agreements with landowners along the River whereby landowners conveyed water rights appurtenant to their lands in exchange for San Carlos Project waters. In 1925, the United States filed a complaint on behalf of itself, the Tribe, GRIC, and other landowners within the San Carlos Project and the Florence-Casa Grande area seeking a determination of rights to water flowing in the River and its tributaries. Two years later, the United States filed an amended complaint seeking the adjudication of water rights to the River alone. After eight years of litigation, the Water Commissioner appointed by the United States District Court for the District of Arizona issued the Globe Equity Decree ("Decree") in 1935 dismissing all defendants who maintained claims only to waters of the River's tributaries, and listing the dates of priority and amounts of water to the mainstem of the River to which each of the effected parties were entitled.

Consolidation of general adjudications to water rights of the River began in 1981 and continued into the 1990s under direction by the Arizona Legislation calling for interested parties to file summary judgment motions as to whether the Decree precluded claims raised by or on behalf of the Tribe. In 2001, GRIC, ASARCO LLC, Phelps Dodge Corporation, the City of Safford ("Safford"), the Gila Valley Irrigation District ("GVID"), the Franklin Irrigation District ("FID"), and the San Carlos Irrigation and Drainage District ("SCIDD") filed summary judgment motions asserting that the Decree precluded the Tribe from additional claims to water from the River and its tributaries. The Tribe also filed a summary judgment motion arguing that the Decree did not preclude its claims to additional water from the River and its tributaries. In 2002, the Superior Court of Maricopa County granted partial summary judgment to ASARCO, Phelps Dodge, Safford, SCIDD, GVID, and FID, holding that the Decree was limited in scope to waters of the River and not its tributaries. The Supreme Court of Arizona granted this interlocutory appeal to review issues raised by the Tribe turning on the representation of the Tribe's interests in litigation leading to and subsequent to the Decree, and the preclusive effect of the Decree.

The Supreme Court of Arizona held that the United States District Attorney ("Attorney") adequately represented the Tribe in all adjudications concerning allocation of rights to the River and its tributaries, as prescribed by legislation enacted by Congress in 1893 appointing the Attorney to represent Native Americans in all suits at law and in equity.

Thus, while the United States had no authority to extinguish water rights granted by the Decree, it possessed the power to represent the Tribe's interests in order to quantify the Tribe's water rights. Additionally, the court declined to address the Tribe's argument of an absence of privity on grounds of comity.

The court reasoned that the dismissal without prejudice of all defendants claiming only tributary rights from the Globe Equity litigation indicated the convenience of separate adjudication of the water rights to the mainstem of the River and its tributaries. The court applied the transactional test for determining the identity of claims, and found that prior claims brought by the United States on behalf of the Tribe regarding the mainstem of the River were not part of the same transaction as claims to the River's tributaries. Ultimately, the court affirmed and remanded the order of the superior court holding that the Decree had preclusive effect to any claims made by the Tribe and the United States to additional water from the mainstem of the Gila River, and that the Decree had no preclusive effect to claims made by any party to water from the Gila River's tributaries.

Matthew Smith

CALIFORNIA

City of Watsonville v. State Dep't. of Health Serv., 35 Cal. Rptr. 3d 216 (Cal. Ct. App. 2005) (holding that state law preempted a conflicting city ordinance because the subject was of statewide concern and the state law that fully regulated the subject was reasonably related and narrowly tailored to avoid infringing on legitimate municipal interests).

California's Health and Safety Code required the City of Watsonville ("City") to fluoridate the public water system, because the City's water system had more than 10,000 service connections. Before completing the fluoridation project, the City passed Measure S, a ballot initiative that prohibited introducing any substance into the City's drinking water supply unless approved by the United States Food and Drug Administration for safety and effectiveness. Since Measure S effectively prohibited fluoridation of the City's water supply, the City stopped the fluoridation process. The California Department of Health Services ("DHS") ordered the City to fluoridate and comply with section 116410 of the Health and Safety Code. The City sought declaratory and injunctive relief from the Superior Court of Santa Cruz County, California. The trial court concluded state law preempted Measure S and the City had to follow the requirements of state law.

The City appealed to the Sixth Appellate District Court of Appeals. The court determined an actual conflict existed, because state law fully