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## United States v. Matley Family Trust, 354 F.3d 1154 (9th Cir. 2004)

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Both parties challenged the equity of the \$50,000 bond imposed on SOS. In challenging the amount of the bond as excessive, SOS relied on past precedent where courts had either not required public interest organizations to post a bond at all or required the posting of only a nominal amount. However, SOS presented no evidence of hardship caused by the bond when given the opportunity by the district court. Lone Mountain contended that the bond must be sufficient to compensate the company for any losses incurred as a result of the injunction; therefore, the district court set the bond amount too low. The court affirmed the amount of the bond, because the district court had considerable discretion in setting the amount of the bond to secure the preliminary injunction limited only to the extent that the amount of the bond would prevent the affected party from going forward with the suit.

In conclusion, the court applied a deferential standard of review to the decisions of the district court and affirmed both the grant of the preliminary injunction and the amount of the security bond required of SOS.

*Sean R. Biddle*

**United States v. Matley Family Trust, 354 F.3d 1154 (9th Cir. 2004)**

(holding that the Water Master is not required to follow Federal Rules of Evidence or Civil Procedure in water reclassification hearings and before reclassifying land, the Water Master must consider principles of beneficial use in addition to reductions in crop yield).

The land in dispute is part of the Newlands Reclamation Project ("Project"), which relies on two judicial decrees for allocating water rights from the Truckee and Carson Rivers, the Alpine Decree and the Orr Ditch Decree. These decrees classified Project land as either "bottom land" or "bench land" based on the land's soil characteristics. However, the decrees did not specify a method for applying the classifications to Project lands. In 1986, the Department of Interior ("DOI") reviewed soil surveys and adopted a classification scheme for each parcel in the Project. The Truckee Carson Irrigation District, which represented the Matleys and other owners of land within the Project, challenged the DOI scheme, based on the reduction of the Matleys allocation from 4.5 acre feet per year ("af") to 3.5 af. Under that challenge, the United States District Court for the District of Nevada ruled in favor of the Matleys. However, the United States Court of Appeals for the Ninth Circuit reversed, remanded, and limited the district court's review to determining if the DOI had acted arbitrarily and capriciously in promulgating the regulations. On remand, the district court upheld the DOI criteria and classification maps. The Matleys then appealed the reclassification on the basis that the reallocation caused a decrease in crop yield. The Water Master recommended that the DOI grant

their reclassification petition, and the district court adopted the Water Master's recommendation.

When the Water Master received the Matleys' petition, he did not notify the United States or the Pyramid Lake Paiute Tribe that the Matleys appealed the reclassification; he subsequently approved the petition without conducting a hearing. The United States and the Tribe filed a request for an evidentiary hearing in district court. The Water Master received the Tribe's evidence, but did not hold an evidentiary hearing or allow discovery. Instead, the Water Master reissued an amended version of his original report, restating his findings and recommending that the DOI grant reclassification. The Tribe challenged the proceeding on two grounds. First, the Tribe argued that the Water Master must follow the Federal Rules of Evidence or Federal Rules of Civil Procedure and allow the parties to conduct discovery and to hold an evidentiary hearing where they can cross-examine witnesses. The court held that special masters have broad discretion to determine the manner they use to complete their duties and are not required to follow Federal Rules of Evidence or Civil Procedure. Second, the Tribe argued that the Water Master violated its due process rights by failing to give notice of the reclassification petition and failing to hold an evidentiary hearing. The court held that because the Water Master allowed the Tribe to submit evidence and then reviewed that evidence before issuing a final report, the reclassification did not violate the Tribe's due process rights.

Although the court rejected the Tribe's procedural arguments, the court held the Water Master applied the wrong legal standard in evaluating the reclassification petition. The Water Master only considered reduction in crop yield, and did not consider whether the reclassification would comply with the principles of beneficial use. The court qualified the doctrine of beneficial use, holding that the use cannot include any element of waste and that the use cannot be unreasonable. Even if an applicant would benefit from the increased water duty, the court will uphold the original classification where the gain is small and is not economically applied. The court reasoned that a landowner is not guaranteed an appropriation of water that ensures maximum crop yield, but rather must prove a reasonably significant reduction of their yield in light of the applicable beneficial use standard. Therefore, the Ninth Circuit remanded the case to the district court or Water Master and ordered reconsideration of the petition in light of the principles of beneficial use.

The dissent disagreed with the reasons for remand and argued that the district court improperly reviewed the DOI's reclassification scheme. The dissent concluded that the Water Master ordered the reclassification on grounds not contained within the DOI's regulations and argued that the evaluation should give deference to those regula-

tions and confine itself to whether the reclassification is valid within that context.

In conclusion, the court held the Water Master had not violated the United States and the Tribe's due process rights, because the Tribe had an opportunity to present evidence and have its case heard. However, the Water Master did not consider principles of beneficial use and the court remanded the case for the district court or Water Master for reconsideration using the appropriate standard.

*Katherine Iverson*

**Westlands Water Dist. v. United States Dep't of the Interior, 376 F.3d 853 (9th Cir. 2004)** (holding (1) an Environmental Impact Statement need only consider reasonable alternatives; (2) a substantial showing of new information requires a supplemental Environmental Impact Statement; and (3) additional reasonable and prudent measures can involve only minor changes to a Record of Decision).

The opening of the Trinity River Dam and water diversion on the Trinity River in Northern California caused the river environment to diminish, subsequently resulting in a fishery resources reduction. After a study determined a significant redirection of water flow would rehabilitate the river and fish populations, Congress passed two acts recommending the implementation of strategies to recreate the original river environment. Federal, state, and tribal officials (collectively "officials") released an Environmental Impact Statement ("EIS"), in compliance with the National Environmental Policy Act ("NEPA"), as well as biological opinions ("BioOps"). The Department of the Interior ("Interior") then issued a Record of Decision ("ROD") ordering the implementation of alternatives recommended in the EIS.

In December 2002, Westlands Water District ("Westlands") filed suit against the Interior and the Hoopa Valley Tribe, along with the officials and other federal agencies, alleging violations of the Endangered Species Act ("ESA") and NEPA. Various water agencies and power companies intervened as plaintiffs, while the Yurok Tribe and the Hoopa Valley Tribe (collectively "tribes"), who relied on fishery resources, intervened as a defendant. In March 2001, the United States District Court for the Eastern District of California issued a preliminary injunction limiting flow releases into the Trinity River. A year later, the district court granted the defendant tribes' motion permitting increased flow and vacated the stay, allowing the case to move forward for disposition on the merits. Subsequently, all parties filed cross motions for summary judgment.

The district court held: (1) NEPA applied to implementation of the flow recommendations; and (2) the EIS improperly narrowed the requisite Statement of Purpose and Need ("SPN") and failed to consider a reasonable range of alternatives. The district court also imple-