

9-1-2004

Westlands Water Dist. v. United States Dep't of the Interior, 376 F.3d 853 (9th Cir. 2004)

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Alexandra Farkouh, Court Report, Westlands Water Dist. v. United States Dep't of the Interior, 376 F.3d 853 (9th Cir. 2004), 8 U. Denv. Water L. Rev. 234 (2004).

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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-

mented all non-flow measures and ordered the Interior and the tribes to submit a supplemental EIS ("SEIS") addressing further alternatives and mitigation measures. The Interior, the tribes, and the officials appealed to the United States Court of Appeals for the Ninth Circuit and Westlands cross-appealed.

On appeal, the court first examined the district court's decisions that the SPN was unreasonable and the EIS did not explore and objectively evaluate reasonable alternatives. The court held the SPN was reasonable, because the SPN was not arbitrary and capricious, and reversed the district court's ruling. The court reasoned NEPA required an EIS to include a consideration and assessment of the environmental consequences resulting from the proposed actions and alternatives to the action, and no language in the EIS limited consideration of non-flow measures. Furthermore, the EIS was not arbitrary and capricious because the officials' focus on habitat as the best way to restore natural fish production was within the officials' discretion. Additionally, the court reversed the district court's holding that the range of alternatives considered in the EIS was unreasonable. The court reasoned the EIS need not consider an infinite range of alternatives, but should consider whether the selection and discussion of alternatives fostered informed decision making and public participation.

The court then considered the district court's decision requiring SEIS on the BioOps and the Preferred Alternative's impacts on California's power system reliability. The court determined that, under the arbitrary and capricious standard, the SEIS was not required. The court reasoned the BioOps did not present any new information requiring an SEIS and the original EIS analysis was sufficient to show consequences of using flow. Furthermore, the Court reasoned SEIS was not required regarding the Preferred Alternative's impact, based on the Interior's previous determination that power generation losses from release of flow amounted to a small fraction of the overall California power generation and the California energy crisis presented no significant new circumstances.

Finally, the court addressed the district court's invalidation of two reasonable and prudent measures ("RPMs") from the BioOps involving changes under the Endangered Species Act. The court held that both RPMs involved major changes and therefore upheld the district court's ruling. The court reasoned the first RPM, requiring a plan to mitigate the X2 movement, may possibly result in the reallocation of significant amounts of water, affecting wildlife in waterways and causing a broad effect overall. Additionally, the court reasoned the second RPM, which required the immediate implementation of flow regimes, violated the ESA's timing of the action regulation. Finally, the court rejected Westlands contentions on cross appeal based on merit. The court therefore remanded the case to the district court as nothing remained to prevent the implementation of the ROD.

Alexandra Farkouh

TENTH CIRCUIT

Delaunay v. Collins, No. 02-8097, 2004 U.S. App. LEXIS 4032 (10th Cir. Mar. 2, 2004) (holding the district court did not abuse its discretion in granting injunctive relief for use of a ditch water right even though a member of the Northern Arapaho Indian Tribe lacked an easement for the ditch).

Charlene Delaunay, Floyd Collins, and his sons, Gary and Rusty, ("Collins") were enrolled members of the Northern Arapaho Indian Tribe of the Wind River Reservation in Wyoming. Manuel Delaunay, Charlene's husband, was not a member of the tribe. Gary Collins was the tribal water engineer on the reservation and was responsible for administering water and enforcing the tribal water code. Forty acres of the Delaunays' land included a state water right through Little Wind River Ditch Number 5 ("Ditch"), and fifty-seven acres of their lease property had a reserved water right through the Ditch. Collins owned land adjacent to the Delaunays' lease-held land and similarly held a reserved water right through the Ditch.

A feud between the Delaunays and Collins began when Collins intentionally blocked the Delaunay water supply because Manuel was not a member of the tribe and, therefore, according to Collins, had no right to be on the land. In addition to the water obstruction, the Delaunays alleged they received discriminatory treatment when they enlisted the help of the tribal water board.

The Delaunays filed suit in the United States District Court for the District of Wyoming seeking damages and injunctive relief claiming race-based discrimination. Specifically, the Delaunays claimed Collins deprived them of equal benefits of the law through Gary's abuse of his position as tribal water engineer and deprived their real property rights by blocking their water. A jury returned a unanimous verdict in favor of the Delaunays and awarded \$350,000 in damages. The district court enjoined Collins from interfering with the Delaunays' water rights and restrained Gary, as water engineer, from administering the water in the Ditch.

The district court ruled on several pre-trial motions. The court first denied the Collins' renewed motion for judgment as a matter of law because the Delaunays presented sufficient evidence of racial discrimination to allow a reasonable jury to find in their favor. Second, the court granted the Delaunays' motion for attorney's fees. Third, in response to the Collins' motion for remittitur, the court upheld the jury's finding of liability.

The Delaunays argued they suffered from discrimination because Collins, who never had had a water dispute with any other tribal member, interfered with the Delaunay's water use by blocking access. Fur-