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Three Forks Ranch Corp. v. City of Cheyenne, 2004 U.S. App. LEXIS 7994 (10th Cir. Apr. 22, 2004)

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ther, Gary, as tribal water engineer, failed to enforce evenhandedly the water code and water board directives. Collins argued the Delaunays lacked a ditch easement and therefore had no rights concerning the Ditch. However, enrolled tribal members and non-enrolled close family members were entitled to go onto reservation lands without specific permission. Regardless of whether an easement existed, the jury could have found the Collins violated Delaunays' rights if it concluded Collins denied access to the Ditch solely because of Manuel's race.

On appeal, Collins argued the district court erroneously: (1) denied their motion for a judgment as a matter of law; (2) refused their proffered jury instruction; (3) granted injunctive relief; (4) calculated the amount of remittitur; and (5) awarded attorney fees.

However, the United States Court of Appeals for the Tenth Circuit concluded the district court did not err on any of these claims. First, the court noted it could only reverse the lower court's determinations as a matter of law if the evidence pointed one way and was susceptible to no reasonable inferences supporting the Delaunays. The court felt the Delaunays presented a legally sufficient basis for the jury to find in their favor. Second, the refusal of the Collins' proffered jury instruction was not properly objected to in a timely manner and, even so, the court concluded the district court's instructions were not prejudicial or in plain error. Third, the Collins continued to argue the Delaunays lacked an easement for the portion of the irrigation ditch that crossed the Collins' land and, therefore, they could not have violated the Delaunays' rights. Thus, the Collins argued, injunctive relief was improper. However, since the Delaunays permissively used the Ditch, and given the finding, that Collins' actions violated the Delaunays' civil rights, the district court did not abuse its discretion in granting injunctive relief. Fourth, since the Delaunays put forth substantial testimony of emotional, financial, and physical hardship in support of a compensatory damage award, the district court did not err in calculating remittitur. Last, since the court gave the district court substantial deference in reviewing computation of attorney fees, the district court did not abuse its discretion.

Therefore, because the district court did not abuse its discretion in granting injunctive relief to the Delaunays for use of the Ditch, the United States Court of Appeals affirmed the judgment of the district court and dismissed the case.

Kevin Lazar

Three Forks Ranch Corp. v. City of Cheyenne, 2004 U.S. App. LEXIS 7994 (10th Cir. Apr. 22, 2004) (holding no private cause of action for interference with water rights existed under the Colorado River Compact).

Three Forks Ranch Corporation (“Three Forks”) appealed the United States District Court for the District of Colorado’s dismissal of its complaint requesting damages and an injunction against the City of Cheyenne, Wyoming, the Cheyenne Board of Public Utilities, Wyoming’s State Engineer, and Wyoming’s Water Development Commission (collectively “Wyoming Defendants”). Three Forks’ complaint alleged Three Forks owned Colorado water rights and the Wyoming Defendants diverted additional water from the Little Snake River Basin for Cheyenne’s municipal supply. The Little Snake River Basin flows south of Wyoming across the Colorado border and the Three Forks property was the first property downstream from the Wyoming Defendants’ intended diversions. Three Forks owned Colorado water rights with a priority date of 2000 and claimed the Wyoming Defendants’ diversions violated the Colorado River Basin Compact (“Compact”) by injuring those water rights.

While Three Forks raised a variety of challenges to the district court’s decision, the United States Court of Appeals for the Tenth Circuit only considered whether the Compact provided Three Forks with a private right of action that allowed Three Forks to invoke the Compact to protect Three Forks’ rights. The Compact prevented parties from interfering with the right of other parties to regulate water appropriation within their boundaries; however, the court held that the Compact created no private right of action. The court determined no private right of action existed under the Compact because: (1) Three Forks was not a part of the class that the Compact was enacted to protect, (2) the intent behind the Compact did not support a private right of action, (3) a private right of action was not consistent with the underlying scheme of the Compact, (4) the Compact lacked an explicit private right of action, and (5) signatory states possess no right of action under the Compact. The court also concluded no private right of action existed under the Compact because the Compact itself only apportioned water among the states, and did not create private water rights.

Finally, the court addressed Three Forks’ argument that federal common law created a private right of action under the Compact. The court held that only signatories of the Compact could assert federal common law theories under an interstate water compact. Because Three Forks was not a signatory of the Compact, it could not assert such a right of action. The court accordingly held the Compact provided no private right of action for Three Forks and affirmed the decision of the District Court dismissing Three Forks’ complaint.

Jared Ellis

COURT OF FEDERAL CLAIMS

Fraser Constr. Co. v. United States, No. 03-5155, 2004 U.S. App. LEXIS 20338 (Fed. Cir. Sept. 27, 2004) (affirming the trial court’s