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Ambrosia Coal & Constr. Co. v. Pages Morales, 368 F.3d 1320 (11th Cir. 2004)

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order that parties make changes in water use in a manner provided by law required the application of both substantive state water law and procedural state water law. More importantly, the court determined Nevada Revised Statute section 533.450(5) was an inseparable part of Nevada water law because without an automatic stay, as provided by Nevada Revised Statute section 533.450(5), it would be impossible to remedy an error by the State Engineer since the water at issue would already be used. Finally, the Ninth Circuit noted it previously held Nevada procedures for adjudicating water disputes applied to Orr Ditch proceedings. Thus, the court affirmed the district court's ruling that Nevada law, rather than the Federal Rules of Civil Procedure, governed the motion for a stay of the State Engineer's ruling under the Orr Ditch Decree.

Charles P. Kersch, Jr.

ELEVENTH CIRCUIT

Ambrosia Coal & Constr. Co. v. Pages Morales, 368 F.3d 1320 (11th Cir. 2004) (holding the District Court for the Southern District of Florida abused its discretion when it granted an abstention based on a misapplication of the *Colorado River* doctrine, because even the six factors the Eleventh Circuit Court of Appeals considered in analyzing the permissibility of an abstention failed to overcome the strong bias against abstention).

This case arose between Ambrosia Coal and Construction Company ("Ambrosia") and Pages Morales ("Pages") over a settlement agreement ("Settlement") concerning a leasehold interest in real estate in Isla Verde, Puerto Rico. After the entering into the Settlement, Pages entered into an agreement with Green Isle, Ltd. that unilaterally compromised the Settlement. Ambrosia filed a suit in the United States District Court for the Southern District of Florida ("Federal Case"). Simultaneously, Pages and other defendants filed a lawsuit in the Court of First Instance of the Commonwealth of Puerto Rico ("Puerto Rico Case").

Pages filed a motion to dismiss the Federal Case. Although it denied the motion, the district court considered whether it should abstain, pending final judgment in the Puerto Rico Case, based on the United States Supreme Court's opinion in *Colorado River Water Conservation District v. United States*. After the district court granted an abstention, Ambrosia appealed to the United States Court of Appeals for the Eleventh Circuit, alleging the abstention was an abuse of discretion.

The court began its analysis by discussing *Colorado River*, a case where the United States filed a suit in federal court against approximately 1000 water users, seeking declaration of the government's water rights. Before any proceedings occurred in that case, one of the water

users filed a suit in state court seeking an order to join the United States in a proceeding to adjudicate both federal and state water rights. Under the McCarran Amendment, the water users could bring the United States into the adjudication without the United States' consent. Once the United States was included in the state proceeding, the water users, who were defendants in the United States' federal court action, filed a motion to dismiss the federal proceeding on the ground that the "McCarran Amendment terminated jurisdiction of federal courts to adjudicate federal water rights." The federal court in *Colorado River* granted abstention without reaching the jurisdictional question, and the Supreme Court affirmed the abstention.

In its opinion in *Colorado River*, the Supreme Court held federal courts could only abstain from a case that another court is also adjudicating to avoid duplicative litigation in exceptional circumstances. The most important factor in granting the abstention was the fact that the McCarran Amendment showed a clear federal policy of avoiding the "piecemeal adjudication of water rights in a river system." The Supreme Court concluded that, because of the local nature of the water, Colorado law would provide a more comprehensive adjudication.

The court considered whether the *Colorado River* doctrine should apply to the Federal Case. The court held the *Colorado River* doctrine applied when the proceeding involved substantially the same parties and issues. Because the Puerto Rico Case and the Federal Case involved substantially the same parties and issues, the court concluded the doctrine properly applied to the case. The court then considered whether the abstention was an abuse of discretion.

The court laid out a set of factors the Eleventh Circuit used in analyzing the permissibility of an abstention: (1) whether one of the courts had assumed jurisdiction over property, (2) the inconvenience of the federal forum, (3) the potential for piecemeal litigation, (4) the order in which the forum obtained jurisdiction, (5) whether state or federal law would be applied, and (6) the adequacy of the state court to protect the parties' rights. The court stated it would consider the factors "flexibly and pragmatically, not as a 'mechanical checklist,'" and a heavy bias against abstention existed. The court determined all of the factors taken together and individually could not overcome the bias against abstention; thus, the abstention was an abuse of discretion. The court therefore reversed the district court's abstention and remanded the case.

Mark Terzaghi Howe

Fla. Pub. Interest Research Group Citizen Lobby v. Envtl. Prot. Agency, 386 F.3d 1070 (11th Cir. 2004) (holding: (1) environmental groups had standing to sue; (2) EPA's review of Florida's impaired waters list did not rendered moot by EPA's review of Florida's impaired waters list; and (3) remand to district court required to determine