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Acosta v. Big Bear Comty. Servs. Dist., No. E033363, 2004 Cal. App. LEXIS 2253 (Cal. Ct. App. March 10, 2004)

Sean T. Olson

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thority to regulate harmful substances that flowed through that channel.

Pursuant to the court's findings, the court ordered partial summary judgment for the United States on the claim that Thorson violated the CWA. The court denied the United States' motion for partial summary judgment against Construction Management for lack of evidence. The court further dismissed Thorson's counterclaim for declaratory judgment.

Suzanne Knowle

STATE COURTS

CALIFORNIA

Acosta v. Big Bear Cmty. Servs. Dist., No. EO33363, 2004 Cal. App. LEXIS 2253 (Cal. Ct. App. March 10, 2004) (holding the exaction of groundwater rights in exchange for extending water services was not a regulatory taking).

Andy Acosta appealed the dismissal by the Superior Court of San Bernadino County of his claim that the exaction of water rights in exchange for the extension of water services to his property was a regulatory taking. Acosta obtained a conditional use permit ("CUP") from San Bernadino County allowing him to construct two buildings to use for recycling and storage for a wood-chipping and stockpiling business. The CUP imposed several conditions including the requirements that Acosta install three fire hydrants on his property and procure any water needs from Big Bear Community Services District ("District").

The District agreed to extend a water main on Acosta's property for fire hydrant purposes and provide water services so long as Acosta conveyed his groundwater rights on the property to the District. Acosta argued the conditional taking of water rights from the property was a regulatory taking in violation of the Fifth and Fourteenth Amendments. He filed for a writ of mandate or an administrative mandamus to compel the District to extend a water main on his property without requiring a conveyance of his groundwater rights. The trial court dismissed Acosta's writ and Acosta appealed to the Court of Appeal of California, Fourth Appellate District, Division Two.

The court first addressed the ripeness of Acosta's claim. The District argued because the CUP denied Acosta the right to use water extracted from wells on his property, there was no controversy and Acosta's case was, therefore, not ripe. However, while the CUP required Acosta to procure his water from the District thus making his water right useless, at the time Acosta brought this action, the CUP was no longer binding. Therefore, because Acosta possessed the right to access his water right, there was a controversy and the case was ripe for consideration.

Additionally, the court determined Acosta's case was not moot. A case is moot when a court cannot grant a plaintiff effective relief. The court could have reversed the trial court's dismissal. In doing so, Acosta would receive an extension of the water main without being required to convey his water rights, which would result in effective relief. In addition, a case is not moot when the case presents an issue of broad public interest that is likely to recur, or when a recurrence of the issue between the two parties is possible. The court determined other property owners may wish to obtain water services from the District without conveying their water rights. Additionally, the issue would likely arise again if Acosta reapplied for a CUP. Therefore, because the court could grant effective relief, the issue was likely to recur, and a recurrence of the issue between Acosta and the District was possible, the case was not moot.

The court next addressed whether the District retained the authority to compel the conveyance of water rights. The District derived its power from statute. Government Code authorized the District to supply water services and acquire real property. The District also had the authority to perform acts to achieve those purposes. Additionally, the Water Code authorized the District to declare a water emergency and thereafter adopt measures to conserve the water supply for the greatest public benefit. Therefore, because the District declared a water emergency, the District had the authority to adopt reasonable measures to protect the District's water supply. The court deemed that conditioning the grant of water services upon the granting of water rights was a reasonable measure to protect the District's water supply. As a result, state statute authorized the District to compel the conveyance of water rights when granting new water services.

The court then determined whether the exaction of water rights was a taking requiring just compensation. A land use regulation sometimes constitutes a taking. A land use regulation is a regulation that impairs a landowner's interest in the free use of his land. A taking requires just compensation. The county-issued CUP contained a land-use regulation by requiring the installation of fire hydrants. The District, however, issued no part of the CUP. The District only conditioned the granting of services upon the conveyance of water rights. Conditioning the granting of services on the conveyance of water rights was not a land use regulation. Therefore, Acosta was not entitled to just compensation from the District based on a land use regulation.

However, under the doctrine of unconstitutional conditions, the government cannot require a landowner to convey a property right for public use in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property. Courts apply the doctrine to determine if a regulatory taking has occurred. To determine whether an unconstitutional con-

dition exists, courts must consider if the condition advances a legitimate state interest and whether the condition deprives a landowner of economically viable use of his land. Then a court must ascertain whether an "essential nexus" exists between the state interest and the condition. The "essential nexus" must be a reasonable relationship between the two. If the court determines the nexus exists, it must then ensure the condition is reasonably proportional to the interest the state will achieve. The condition may be considered a taking if the court does not find proportionality between the condition and the state interest. History indicated Northern California experienced a water shortage for fifteen years prior to Acosta's writ. The District provided water throughout this drought and continued to do so after. The District needed to regulate water consumption and prevent depletion of the source of its water in order to continue providing water services. The court decreed this to be a legitimate state interest.

The court determined the required water rights conveyance formed a reasonable nexus to the District's need to regulate and preserve the local water supply. That requirement was also roughly proportional to the needs of the District to regulate and preserve the water supply. As a result, the exaction of water rights in exchange for the supplying of water services did not constitute an unconstitutional condition. Therefore, the court held that it was not a regulatory taking requiring compensation.

Finally, the court determined whether a mandate or judicial review of ministerial or legislative acts was proper. Mandate is proper to correct the exercise of discretionary legislative power, but only if the action taken is fraudulent or so palpably unreasonable and arbitrary as to reveal an abuse of discretion as a matter of law.

Because the exaction of water rights from Acosta did not constitute a regulatory taking and the state exacted the water rights to further a legitimate state interest, it was not fraudulent, or unreasonable and arbitrary. Therefore, a writ of mandate for Acosta was not proper.

As a result, the court affirmed the trial courts dismissal and awarded the District costs for appeal.

Sean T. Olson

Chino Land & Water Co. v. Lewis Investment Co., E033614, 2004 Cal. App. Unpub. LEXIS 2023 (Cal. Ct. App. Mar. 5, 2004) (holding a failure to allege a cognizable water right under any of the three classified California groundwater rights precluded a water company from amending its complaint for quiet title, declaratory relief, and injunctive relief).

Chino Land & Water Co. ("Chino") appealed a judgment in favor of Lewis Investment Co. ("Lewis") after the Superior Court of San Bernardino County sustained Lewis' demurrer to Chino's complaint for