Water Law Review

Volume 6 | Issue 1 Article 13

9-1-2002

Klump v. United States, 30 Fed. Appx. 958 (Fed. Cir. 2002)

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COURT REPORTS

FEDERAL COURTS

UNITED STATES CIRCUIT COURTS

FEDERAL CIRCUIT

Klump v. United States, 30 Fed. Appx. 958 (Fed. Cir. 2002)
(upholding the Federal Claims Court decision to dismiss a Fourth Amendment and state law claim for lack of jurisdiction, granting summary judgment for the government because the Fifth Amendment taking claim was precluded, and holding that: (1) impoundment and sale of trespassing cattle does not effect a Fifth Amendment taking; and (2) the government acting in its proprietary capacity did not effect a Fifth Amendment taking of water rights).

Luther Klump, an Arizona rancher, held a grazing permit for 48,000 acres of Bureau of Land Management ("BLM") land known as the Badger Den Allotment. The permit restricted grazing in the HX Dam Protection Area and allowed for seasonal grazing in the Ryan Seeding Pasture. In 1990, the BLM cancelled the permit after Klump repeatedly ignored the restrictions. In April 1993, the BLM impounded Klump's cattle and sold them at auction, and paid Klump the proceeds minus costs in accordance with BLM regulations.

Klump challenged the cancellation of the grazing permit. Both the administrative judge and the Interior Board of Land Appeals ("IBLA") sustained the permit cancellation. The IBLA decision was appealed to the United States District Court for the District of Arizona and then to the United States Court of Appeals for the Ninth Circuit. Klump argued before both courts that the BLM restrictions on his grazing permit were invalid because it violated his water and grazing rights. Klump further argued that the BLM cancellation of his permit was a Fifth Amendment taking of his property rights without due process and just compensation.

Both the district court and the Ninth Circuit Court of Appeals rejected Klump's arguments. The Ninth Circuit ruled that: (1) Klump had no legally cognizable water or grazing rights in the HX Dam Protection Area or in the Ryan Seeding Pasture; (2) the grazing

permit's restrictions did not violate Klump's water or grazing rights; and (3) in view of Klump's intentional violation of the grazing permits restrictions, the BLM had properly canceled the permit.

In April 1995, Klump filed his action in the court of federal claims, alleging the BLM impoundment and sale of his cattle violated the Fourth Amendment and Arizona state law and that BLM had taken his livestock, water rights, grazing permit, livelihood, and ranch in violation of the Fifth Amendment. In his complaint, Klump sought compensation and damages in excess of $176 million.

In its November 4, 1997 decision, the court of federal claims dismissed the Fourth Amendment and state law claims for lack of jurisdiction. In addressing the Fifth Amendment claim the court held that the BLM did not affect a taking when it impounded and sold Klump's cattle and granted summary judgment for the government. The court concluded that the cancellation of the grazing permit complaint was barred due to issue preclusion arising from the prior litigation in federal district court in Arizona and the Ninth Circuit.

On July 13, 1998, the court of federal claims issued its decision on Klump's claim that the BLM's actions amounted to a taking of his entire ranch and fee lands. The court determined that issue preclusion barred this claim because it was rejected initially in Klump's challenge of the grazing permit cancellation and in a subsequent action by the United States to quiet title to the Badger Den Allotment.

The final decision of the federal claims court over Klump's claims was made on June 8, 2001. The court granted summary judgment in favor of the government on Klump's claim that the BLM's actions amounted to a taking of his water rights. Klump appealed these judgments to the United States Court of Appeals for the Federal Circuit.

The appellate court upheld the federal claims court decision that it lacked jurisdiction to hear Klump's Fourth Amendment and state law claims. The court of appeals held that monetary damages are not available for Fourth Amendment claims and the federal claims court only had jurisdiction over cases in which the Constitution or a federal statute required the payment of monetary damages. Therefore, the court lacked jurisdiction.

The appellate court turned next to Klump's Fifth Amendment takings claims and upheld the federal claims court decision of summary judgment for the government. Klump was precluded from claiming the BLM's actions were a taking and that his lack of a permit was not a bar to his cattle grazing rights. The court of appeals reasoned that Klump had already litigated and lost both of these claims, and their resolution was essential to the final judgment. Therefore, Klump was precluded from relitigating the claim and summary judgment for the government was proper.

The appellate court went on to note that if the grazing permit claim were not precluded, the claim for damages would still fail

because a grazing permit is not a compensable property right. The appellate court stated that the Taylor Grazing Act, the express terms of the lease, and relevant case law all affirm that a grazing permit is not a compensable property interest.

Furthermore, the appellate court affirmed the holding that the impoundment and sale of Klump's cattle was not a taking. Regulation of property rights does not 'take' private property when an individual's reasonable investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions. The BLM's actions were consistent with Klump's reasonable investment-backed expectations. The appellate court reasoned that the BLM permit conditions and numerous warnings put Klump on notice that the BLM would seize and sell his cattle. Accordingly, Klump had no reasonable expectation that his cattle could trespass on federal land.

The appellate court upheld the federal claims court decision that the BLM had not affected a Fifth Amendment taking of Klump's water rights and claims. The Appeals Court held that while sovereign acts may give rise to a Fifth Amendment taking, mere assertions of a right of property do not. In obtaining the water rights to the Badger Den Allotment, the BLM acted in its proprietary capacity and received the same treatment under state law as a private owner.

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Walcek v. United States, 303 F.3d 1349 (Fed. Cir. 2002) (holding: (1) the impact of a challenged regulatory taking must be evaluated in terms of its effect on the landowner's parcel as a whole in consideration of wetlands regulation; and (2) the determination of the fair market value of property allegedly taken inherently factors in inflation).

Dolores, Stanley, and Albert Walcek, and Regina Ammons ("Walceks") sued the United States, claiming the government's regulation of their property constituted a taking. The United States Court of Federal Claims dismissed the complaint on the merits. The Walceks appealed to the United States Court of Appeals for the Federal District.

The Walceks purchased 14.5 acres of real property in 1971. In 1972, 13.2 acres of the property became subject to regulation under section 404 of the Clean Water Act ("CWA") as federally regulated wetlands. In 1988, the Walceks submitted a series of applications to the Army Corps of Engineers ("Corps") for authority to fill and develop the land pursuant to section 404 of the CWA. In 1993, the Corps denied approval of the Walceks' development plans, and proposed alternatives, which the Walceks considered economically