

9-1-2001

## Klump v. United States, 50 Fed. Cl. 268 (2001)

Willow Arnold

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

---

### Custom Citation

Willow Arnold, Court Report, Klump v. United States, 50 Fed. Cl. 268 (2001), 5 U. Denv. Water L. Rev. 254 (2001).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Klump v. United States, 50 Fed. Cl. 268 (2001)

complete extinction of all value and effectuated a physical taking.

The government's third argument insisted that both the terms of Tulare's contract and the background principles of state law imposed limits on Tulare's titles that rendered their water loss non-compensable. The government contended that Tulare's contracts entitled them to only the amount of water made available to the DWR. Because the water was not available to the DWR, Tulare had no claim to the foregone flow. However, the court dismissed the government's legal authority as inapposite. The court pointed out the government lacked the contractual immunity from liability they relied on in their arguments.

Finally, the government offered a common law justification for limiting the scope of Tulare's property right. Specifically, Tulare could not have a vested right in a use or method of diverting water that was unreasonable or violated the public trust. The court rejected the government's assertion. The SWRCB defined a comprehensive scheme that balanced and allocated water rights among users in the decision D-1484 ("decision"). Once the SWRCB made an allocation under the decision, that determination defined the scope of Tulare's property and contract rights. Therefore, the decision protected Tulare's right to divert water, notwithstanding the SWRCB's compliance with the RPAs.

Thus, the court held that the federal government was free to preserve fish; however, it must pay for the water it takes to do so.

*John A. Helfrich*

**Klump v. United States, 50 Fed. Cl. 268 (2001)** (holding the United States Bureau of Land Management asserted water rights through the same legal channels applicable to individuals, and thus it did not violate the Fifth Amendment takings clause).

Luther Klump ("Klump") alleged the United States violated the Fifth Amendment by taking his property without providing just compensation. Klump made various earlier claims, which the United States Court of Federal Claims addressed in prior orders. Klump's loss of water rights remained the only issue, on which the United States moved for summary judgment.

Klump had water rights associated with cattle grazing permits on land in southeastern Arizona owned by the United States Bureau of Land Management ("BLM"). During the term of the permits, Klump and the BLM disputed over Klump's alleged failure to comply with some of the inherent conditions, such as allowing his cattle to graze in prohibited areas. As a result, the BLM cancelled Klump's permit, ordered him to remove his cattle from the land, and impounded some of his cattle. These legal developments prompted the Arizona

Department of Water Resources to transfer Klump's water rights, associated with the now cancelled permit, to the BLM. Klump alleged the BLM's actions constituted a taking of his property, including water and grazing rights, livestock, and entitlement to use his ranch. However, the court found BLM did not obtain the water rights by exercising its sovereign power under the Fifth Amendment to take private property.

The BLM argued it obtained the rights through normal state procedures, not by exercising sovereign power. Klump, conversely, maintained that the BLM did utilize such power without providing just compensation, and, as such, violated the Fifth Amendment. When the government "takes" property, it exercises its sovereign right to acquire property from its rightful owner for the public good and must provide just compensation. However, in this case, the United States did not exercise such sovereign power. Instead, the United States claimed rightful ownership of the property via water rights. Thus, the BLM did not act unilaterally to affect its claim through the exercise of sovereign powers, but, instead, applied to a state agency to have the water rights transfer authorized. By doing so, the BLM acted as an individual landowner, not as a sovereign. It therefore submitted itself to the same laws governing individuals, and removed itself from the ambit of Fifth Amendment takings claims. Thus, this case involved conflicting claims of rightful ownership between two private parties, and not a sovereign acquisition of property. Accordingly, the court held the taking claim invalid.

*Willow Arnold*

## UNITED STATES DISTRICT COURTS

**California v. California Coastal Comm'n, 150 F. Supp. 2d 1046 (N.D. Cal. 2001)** (holding oil and gas lease suspensions are federal activities requiring a determination of consistency with state coastal management programs, and an explanation of categorical exclusions under the National Environmental Policy Act is necessary).

This case involved oil and gas lease suspensions governed by the Outer Continental Shelf Lands Act ("Act"). Under the Act, there are four required steps to receive an oil and gas lease. The final step requires the filing and review of a development and production plan ("DPP"). The DPP must be submitted along with a certification that each activity was consistent with the state's coastal management program. Between 1968 and 1984, the Mineral Management Service ("MMS"), a division of the Department of the Interior, conducted four sales of oil and gas leases for the Outer Continental Shelf ("OCS") off the coast of California, which resulted in it issuing forty leases. Until 1992, MMS had granted suspensions on the leases. In that year,