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California v. California Coastal Comm'n, 150 F. Supp. 2d 1046 (N.D. Cal. 2001)

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California v. California Coastal Comm'n, 150 F. Supp. 2d 1046 (N.D. Cal. 2001)

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,

several elected officials from California wrote letters to the MMS opposing further lease suspensions. They requested the California Coastal Commission ("CCC") to determine whether it had authority, under the Coastal Zone Management Act ("CZMA"), to review the pending lease suspensions for consistency with the state's California Coastal Management Program ("CCMP"). On July 27, 1999, the CCC told MMS it was asserting its authority to review the lease suspensions. It stated it was concerned about the age of the leases, the poor quality of the oil, the proximity of the leases to marine sanctuaries, and changed environmental circumstances, such as the expansion of the territory of the threatened southern sea otter into the area. On August 13, 1999, former Secretary of Interior Bruce Babbitt, indicated that the lessee's suspension requests did not trigger the CCC's consistency review authority because the requested suspensions did not have any effect on California's coastal zone. The CCC claimed this was in error and that the MMS had also failed to follow the requirements under the National Environmental Policy Act ("NEPA").

The district court held that pursuant to section 1456(c)(1) of the CZMA, the MMS must provide California with a determination that its grant of the lease suspensions at issue is consistent with California's coastal management program. In addition, pursuant to NEPA, the MMS must provide a reasoned explanation for its reliance on the categorical exclusion and the inapplicability of the extraordinary circumstances exceptions.

CZMA requires federal agencies to determine that any activities affecting the coastal zones are consistent with the state's coastal management program. The issue here was whether a lease suspension, like the sale of oil and gas leases, was considered a "federal activity." Congress amended Section 1456(c)(1)(A) of CZMA after the Supreme Court decision in *Secretary of the Interior v. California*. That section now states that a federal activity within or outside the coastal zone must be consistent to the maximum extent practicable with state management programs. Since the 1990 amendment, the sale of oil and gas leases has been determined a federal activity. This court held that lease suspensions were also federal activities because they extend to the primary term of the leases, and since oil and gas leases must now be consistent with the state's coastal management program at the time they are sold, so must lease suspensions.

MMS must also comply with NEPA requirements. Over the years, MMS categorically excluded the grant of lease suspensions from NEPA. NEPA allows categorical exclusions if they "do not individually or cumulatively have a significant effect on the human environment." While the court held that MMS was not wrong in placing the lease suspensions in this category under NEPA, it stated MMS must still provide some explanation for their reliance on the categorical exclusion. This holding comes from *Jones v. Gordon*, where the Ninth Circuit stated that an agency must discuss whether an exception to the categorical exclusions applies.

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