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United States v. Idaho, 23 P.3d 117 (Idaho 2001)

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accomplished, and the parties recorded the joinder agreement and flowage easements in the public records. The joinder agreement between LTIF and Glen Abbey explicitly acknowledged the pond's designated use as storage for the reclaimed water "on and/or adjacent" to the property subject to the agreement.

VLX contended Glen Abbey should have obtained a separate flowage easement from LTIF. The court disagreed, finding the joinder agreement clearly illustrated that LTIF consented to the flowage easement across the entire pond. The court stated, "[i]t is simply too fanciful to imagine that [LTIF] intended that water be placed into the pond yet not flow beyond the golf course's invisible boundary." The court also emphasized that if LTIF intended to sell a flowage easement over its adjacent portion of the pond, it would have included this in the joinder agreement with Glen Abbey. VLX further argued that since Glen Abbey did not own portions of the property included in the Delivery Agreement between itself and Southern Utilities, Glen Abbey did not have the right to grant an easement over the additional property. The court agreed Glen Abbey could not grant an easement over property it did not own, but stated, "Glen Abbey could agree by contract to provide storage over unowned contiguous lands if the owners of the contiguous lands agreed." Here the owners of the contiguous lands consented to the agreement between Glen Abbey and Southern Utilities and "by its terms the Delivery Agreement contemplated that ponds contiguous to the golf course would be utilized to provide storage for the water to be used in the irrigation."

In conclusion, the court held LTIF owned a sufficient interest in the contiguous property to subject it to storage of reclaimed water. LTIF's subsequent conveyance to VLX was subject to such previous grant and as such VLX's inverse condemnation action must fail.

Lucia Padilla

IDAHO

United States v. Idaho, 23 P.3d 117 (Idaho 2001) (affirming the Snake River Basin Adjudication District Court's summary judgment denying the United States an implied reserved water right within the Deer Flat National Wildlife Refuge).

In 1937, the United States created the Deer Flat Migratory Waterfowl Refuge and the Snake River Migratory Waterfowl Refuge along the Snake River in Idaho. Contained within both refuges were several islands along the Snake River that provided habitat for native birds. In 1963, the United States consolidated the two refuges into the Snake River National Wildlife Refuge. In 1992, the United States filed claims for reserved water rights. Amended claims followed in 1994

and 1997. The state of Idaho (“Idaho”) and other parties objected. The Snake River Basin Adjudication District Court (“SRBA”) granted Idaho’s motion for summary judgment and denied the United States had reserved water rights. The United States appealed to the Supreme Court of Idaho.

On appeal, the Supreme Court of Idaho listed three elements necessary to determine the existence of a federal reserved water right: (1) whether there had been a reservation of land; (2) whether the acts reserving the land contained an express reservation of water; and (3) if not, whether the acts implied a reservation of water. As neither party disputed the existence of the land reservation or the absence of an express water reservation, the Idaho Supreme Court only addressed the question of whether an implied reservation of water existed.

An implied reservation of water existed if the court could infer that the executive body intended to reserve unappropriated waters. This court would infer this intent if water was necessary for the primary purposes of the reservation and if the lack of water would entirely defeat the purposes of the reservation. If water was necessary only for a secondary purpose, the United States would have to reserve water in the same manner as any other public or private appropriator.

The court then determined the primary purpose of the refuge. Since the reservation did not specify the primary purpose, the court considered relevant acts, enabling legislation and surrounding history to make this determination. The relevant act was the Migratory Bird Conservation Act (“Act”); the purpose of reserving the lands was to further effectuate the goals of the Act. The Act protected threatened and endangered birds by establishing sanctuaries and prohibiting hunting within them. Ultimately, the Act benefited farmers by promoting an increase in the populations of the birds that prey on insects harmful to the crops. The court concluded the primary purpose of the Act was to prohibit hunting on reserved lands, and that the United States had not proven water was necessary for this purpose.

Next, the court looked to the history of the reservations. At the time of the reservations, the lands and surrounding waters were part of reclamation projects. The projects’ dams created reservoirs and the resulting islands that became the bird sanctuaries. Therefore, these reclamation uses had priority over the lands so reserved. Since the reservations were secondary to reclamation, the court concluded that implied water reservations could not exist due to the direct conflict with the reclamation use of providing irrigation water to local farmers.

Finally, the court ruled that an implied water reservation was incompatible with the original intent of the reservation. The refuges protected insectivorous birds from extinction, which is inconsistent with the claim that the reservations contained implied water reservations at the expense of the farmers for whom the birds provided benefit. Therefore, the court ruled in favor of Idaho by affirming the district court’s decision and denying the United States’ claim to a reserved water right.

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