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Elephant Butte Irrigation Dist. v. United States Dept. of Interior, 269 F.3d 1158 (10th Cir. 2001)

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district court's factors include: evidence in the record that the procedures to transfer water changed at least three times over the years; an applicant was told that transfers were not allowed; and no evidence existed that any of the landowners making intrafarm transfers used more water than the amount granted by contract with the government.

The court noted that if the landowners attempted to transfer rights prior to filing their applications in this case and were thwarted by the government or TCID, which would most likely demonstrate their lack of intent to abandon. Yet, the court stated that the fact that a landowner might have been prevented from filing a transfer application would do nothing to alter a finding of non-use for the statutory period. To completely remove the possibility of equitable relief for those landowners who would otherwise technically forfeit their properties through non-use, but who made efforts to comply with the transfer requirements during the moratorium period, would be inconsistent with equitable principles. The law abhors forfeiture; thus equity should operate in these limited situations to protect landowners.

In conclusion, the Ninth Circuit reversed the district court's order to the extent that it provided blanket equitable relief for intrafarm transfers without requiring an individualized factual showing with respect to each transfer applicant. More specifically, the court held that the district court erred in granting equitable relief to those landowners facing abandonment because the landowners may demonstrate that they did not abandon their water rights as a matter of law. On remand, the district court was instructed to make factual findings in order to determine whether each individual landowner had the requisite intent to abandon in light of the factors noted in the district court's opinion. With respect to forfeiture, the Ninth Circuit reversed the district court's application of a blanket equitable exemption. However, the court concluded that equity may be appropriate on a case-by-case basis in the forfeiture context if a landowner can show steps were taken to transfer water rights during the period of non-use, but that those steps were thwarted by the government or TCID.

Nicole A. Ressue

TENTH CIRCUIT

Elephant Butte Irrigation Dist. v. United States Dept. of Interior, 269 F.3d 1158 (10th Cir. 2001) (holding the Hayden-O'Mahoney Amendment did not repeal Section 4-1 of the Reclamation Act of 1902 in its entirety and thus did not terminate the water districts' rights to certain revenues arising under Section 4-1; further holding Section 4-1 and the Omnibus Adjustment Act of 1926 did not impose upon the Secretary of the Interior an obligation to generate profits for the water

districts by way of grazing leases).

This appeal involved the Rio Grande Valley irrigation project, a national plan adopted in the late nineteenth and early twentieth centuries designed to irrigate arid western lands. The Elephant Butte Irrigation District of New Mexico and the El Paso County Water Improvement District No. 1 of Texas (collectively "Water Districts") filed a complaint against the federal government asserting, *inter alia*, that they were entitled to revenues under section 4-1, an amendment to the Reclamation Act of 1902. The government contended the Hayden-O'Mahoney Amendment enacted in 1939 ("Amendment") repealed Section 4-1 and, thus, such revenues were not owed to the Water Districts.

In 1902, Congress approved the Reclamation Act and established a general reclamation fund to finance major irrigation projects in the West. At its outset, the reclamation fund consisted solely of monies generated from the sale of public lands. However, the agricultural depression and the severe decrease in the sale of public lands during the 1920s quickly rendered the fund insolvent. In response to this financial crisis, Congress amended the Reclamation Act in 1924 and added section 4-1 requiring water districts to take over the operation and maintenance of the irrigation projects from the federal government. In return for taking on this responsibility, the water districts could retain some of the profits the irrigation projects acquired instead of having to contribute all profits to the reclamation fund.

Despite Congress' efforts to replenish the reclamation fund, the fund continued to struggle as the economic depression persisted through the 1920s and 1930s. In 1939, Congress enacted the Hayden-O'Mahoney Amendment. The Amendment provided for deposit of monies generated by federal power facilities into the reclamation fund. Therefore, it repealed Section 4-1 to the extent this section granted the water districts the right to profits produced by any power facilities.

In 1979 and 1980, the Water Districts took control of the operation and maintenance of their irrigation projects as required by section 4-1. In 1990, the Water Districts filed a complaint and contended, pursuant to section 4-1, they were entitled to revenues generated from such projects. However, the government asserted the Hayden-O'Mahoney Amendment repealed section 4-1 in its entirety, and, thus, terminated the Water Districts' rights to revenues under the section. The government challenged the district court's ruling that as a matter of law, the Amendment did not repeal section 4-1 in its entirety.

The appellate court emphasized that a repeal by implication demands that "the intention of the legislature to repeal be clear and manifest" and that "repeal of a statute by implication is not favored." After studying the text of section 4-1 and the Hayden-O'Mahoney Amendment, the district court found two apparent conflicts between

the statutes and held that the Amendment repealed section 4-1 only to the extent the statutes conflicted with one another.

The district court had also reviewed the legislative intent behind the enactment of the Amendment, and concluded that the purpose of the Amendment was to deposit power revenues into the fund and subsequently into the general treasury. The court found Congress did not intend to regain all of the profits granted to the Water Districts under section 4-1. The Amendment only discussed power revenues while omitting any discussion concerning profits earned from the leasing of project grazing and farmland, and the sale or use of town sites, the two other sources of revenue explicitly provided for in section 4-1. The court held the Water Districts were entitled to those revenues arising under section 4-1, which were not explicitly repealed or modified by the Amendment, *i.e.* profits earned from the leasing of project grazing and farm land as well as the sale or use of town sites.

The second issue on appeal was the Water Districts' claim that under section 4-1 and the Omnibus Adjustment Act of 1926 ("OAA"), the federal government and specifically the Secretary of the Interior owed a fiduciary duty to the Water Districts to generate revenue through grazing leases. The Water Districts contended the agreement between the Bureau of Reclamation ("Bureau") and the Bureau of Land Management ("BLM") was "not in the best interests of the Project beneficiaries" due to the fact that the lease agreement provided "no consideration" to them. In response to this claim, the court concluded the federal government did not owe a fiduciary duty to the Water Districts, nor was the government obligated to manage the water project lands in such a manner as to produce profits for the Water Districts. The court distinguished the creation of an entitlement, which the court described as an "honorary" obligation, and the creation of a fiduciary duty. It held section 4-1 and the OAA did not impose a fiduciary duty upon the Department of the Interior but rather created an entitlement in the Water Districts by the federal government. Relying on Article IV, § 3 of the United States Constitution, the court further held that by delegation from Congress the Department of the Interior had plenary power over the management and administration of public federal lands.

In conclusion, the Tenth Circuit Court of Appeals affirmed the district court's conclusion that the Hayden-O'Mahoney Amendment did not repeal section 4-1 in its entirety, and thus, the Water Districts were entitled to those revenues arising under section 4-1, which were not explicitly repealed or modified by the Amendment. The court also held that section 4-1 and the OAA did not impose an obligation upon the federal government to generate profits for the Water Districts by way of grazing leases. Therefore, the court reasoned, the lease agreement the Bureau and BLM entered into was valid with respect to management of grazing lands within the water districts.

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