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Katharine J. Ellison

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In re Gen. Adjudication of All Rights to Use Water in the Gila River Sys., 35 P.3d 68
(Ariz. 2001)

The court held that the Sunshine Law did not apply to the Board, a public corporation organized under section 11-50-310, and reversed the judgment of the trial court, including the award of attorney fees, and rendered judgment in favor of the Board.

Christopher A. Griffin

ARIZONA

In re Gen. Adjudication of All Rights to Use Water in the Gila River Sys., 35 P.3d 68 (Ariz. 2001) (vacating portion of Superior Court's earlier order upon interlocutory review and holding the "practicably irrigable acreage" standard insufficient as the exclusive quantification method for determining water rights on Indian lands).

In September 1988, the Superior Court held Indian reservations were entitled to "such water as is necessary to effectuate the purpose of that reservation," and applied the "practicably irrigable acreage" ("PIA") method for quantifying the amount of water necessary for each reservation. This method calculated the minimal amount of water necessary to supply "those acres susceptible to sustained irrigation at reasonable costs." Granting an interlocutory review, the court held the PIA method insufficient, ruling each reservation's water needs be determined on a case-by-case basis.

Water users in Arizona acquire water rights through an appropriation and seniority system wherein rights are lost if the appropriator does not make use of them for a period of five years. Indian reservations, as federal lands, acquire water rights upon creation of the reservation, and are not required to maintain the use of the water. In establishing federal lands, whether Indian reservations or national parks, the government "impliedly reserves enough water to fulfill the [primary] purpose of each such reservation." Thus, federal water rights entail only a reservation's minimal need. If a secondary purpose arises, rights for that purpose are subject to the prior appropriation doctrine.

The trial court assumed the primary use of water on Indian reservations would be for agricultural irrigation. To determine the amount of water allotted to a reservation, the trial court applied the PIA standard. The Arizona Supreme Court found PIA to be inherently flawed for failing to take into account the different geographical topographies, cultures, and skills of the various reservations. The location of many reservations does not allow agricultural pursuits, nor are many tribes able to sustain themselves solely from growing crops.

The Arizona Supreme Court held the primary purpose in establishing Indian reservations was to provide a "permanent homeland" for the Native Americans, a homeland inherently entailing various uses of water. The court intended for lower courts to grant water rights to reservations on a subjective basis, considering "parties'

recommendations regarding feasibility and the amount of water necessary to accomplish the homeland purpose.” Rather than set forth a clear test to quantify water rights, the court provided a list of factors, consistent with the idea of a reservation serving as a permanent homeland, with which to determine the minimal amount of water necessary for an Indian reservation. These factors include a tribe’s history and cultural practices, geography and topography of the reservation, groundwater availability, and past water use.

The state litigants argued their water rights would decrease due to the proposed system of allocation to Indian reservations. The Arizona Supreme Court rejected their argument, holding, “such a minimalist approach demonstrates appropriate sensitivity and consideration of existing users’ water rights, and at the same time provides a realistic basis for measuring tribal entitlements.”

Thus, the Arizona Supreme Court vacated that part of the September 1988 order that established PIA as the standard for reserving federal water rights on Indian reservations, instead requiring courts to grant water rights to Indian reservations based on a case-by-case basis. The court affirmed the remainder of the order.

Katharine J. Ellison

CALIFORNIA

Deltakeeper v. Oakdale Irrigation Dist., No. C035745, 2001 Cal. App. LEXIS 3687 (Cal. App. Dec. 26, 2001) (when certain unnamed parties to litigation are protected by the interests of named parties, dismissal of a case is not necessary under the rules of indispensable parties and necessary parties).

Oakdale Irrigation District (“Oakdale”), South San Joaquin Irrigation District (“South San Joaquin”) and Stockton East Water District (“Stockton East”), entered into the Joint District Water Purchase Agreement (“Agreement”) with the City of Stockton, Lincoln Village Maintenance District, Colonial Heights Maintenance District, and Central San Joaquin Water Conservation District, for the sale of water by Oakdale and South San Joaquin to the other parties to the Agreement. Oakdale and South San Joaquin prepared an Environmental Impact Report (“EIR”), which Deltakeeper challenged by a petition for a writ of mandate. On August 26, 1999, Deltakeeper filed a petition for writ of mandamus alleging the EIR failed to address adequately the environmental impacts of the project proposed in the Agreement. They requested the setting aside of the certification of the EIR and a permanent injunction enjoining respondents from engaging in any activity connected with the project until the project approvals fully complied with the California Environmental Quality Act (“CEQA”). The Oakdale, South San Joaquin, and Stockton East