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Potlatch Corp. v. United States, Nos. 24546, 24547, 24548, 24557, 24559 (1999
WL 778325 (Idaho Oct. 1, 1999))

IDAHO

Potlatch Corp. v. United States, Nos. 24546, 24547, 24548, 24557, 24559 (1999 WL 778325 (Idaho Oct. 1, 1999) (holding that the United States has federal reserved water rights to: (1) all unappropriated water flows in the Selway–Bitterroot, Gospel–Hump, and Frank Church River of No Return Wilderness Areas; and (2) all the unappropriated water flows in the tributaries of the Snake River within Hell’s Canyon National Recreation Area).

The Wilderness Act of 1964 (“Act”) designated nearly four million acres of land in Idaho as Wilderness Areas. These preserves were known as the Selway–Bitterroot Wilderness Area, the Gospel–Hump Wilderness Area, and the Frank Church River of No Return Wilderness Area (“Wilderness Areas”). In addition, Congress created the Hell’s Canyon National Recreation Area (“Hell’s Canyon”) within Idaho’s boundaries in 1975. In 1996, the United States filed to reserve water rights within the Wilderness Areas based on the Act. Simultaneously, the United States claimed all unappropriated water flows within Hell’s Canyon based on its organic statute.

Later that year, the United States and the State of Idaho filed cross-motions for summary judgment seeking a determination of whether the Act implied a federal reserved water right for the Wilderness Areas. In 1997, both the United States and State of Idaho filed motions for summary judgment to determine whether the United States Forest Service was entitled to a federal reserved water right in Hell’s Canyon. The Snake River Basin Adjudication District Court (“SRBA”) consolidated both cases.

The SRBA concluded that the Act implicitly entitled the United States to a federally reserved water right within the Wilderness Areas. In addition, the SRBA found that the United States was expressly entitled to all unappropriated flows of water originating in tributaries to the Snake River within Hell’s Canyon. The State of Idaho, the Potlatch Corporation, and a number of other objectors filed this appeal in the Idaho Supreme Court.

On appeal, the first issue was whether the United States held federally reserved water rights within the Wilderness Areas. The court analyzed whether the Act’s designation of the wilderness areas constituted a land reservation by the federal government for the purposes of the federal reserved water rights doctrine. To establish federal reserved water rights, the United States had to show the land was withdrawn from the public domain by statute, executive order, or treaty, and that the withdrawn land was dedicated to a specific federal purpose. The court determined that the clear language of the Act stated that the specific purpose of the reservation was to preserve the wilderness character of the area. The court also stated that it was irrelevant that the lands in question were previously withdrawn as

national forests, since Congress had the authority to re-reserve land for changed purposes.

Next, because the Act did not expressly reserve water rights, the court looked to see if reserved rights were implicit in the Act. A court will infer an intent to reserve water if the water were necessary to satisfy the primary purposes of the reservation. The Act's purpose was maintaining the designated area in its pristine natural condition. Therefore, the Idaho Supreme Court agreed with the SRBA's determination that strictly applying Idaho's prior appropriation regime was inconsistent with this purpose. The court also agreed that removing any water within the Wilderness Areas would defeat the purposes of the Act. Subsequently, the court affirmed the SRBA's determination that Congress intended to reserve all unappropriated waters within the Wilderness Areas.

The second issue was whether the United States held federal reserved water rights to all unappropriated flows of tributaries to the Snake River originating within Hell's Canyon. The court determined the federal reserved water rights doctrine was satisfied because Hell's Canyon was withdrawn by federal statute. The withdrawal's purpose was to preserve the natural beauty and historical values of the Hell's Canyon area for future generations. The court rejected the argument that the Hell's Canyon Act was merely a land management statute. Therefore, the court affirmed the SRBA's finding that Hell's Canyon withdrawal was a governmental land reservation, and thus satisfied the reserved rights doctrine.

The SRBA and the Idaho Supreme Court both concluded that the Hell's Canyon Act expressly reserved the tributaries of the Snake River within Hell's Canyon. The plain language of the Hell's Canyon Act clearly stated that Hell's Canyon would comprise all land and water within the area. Therefore, the United States was entitled to reserve all unappropriated water flows in the tributaries of the Snake River originating within Hell's Canyon.

Kirk Waible

INDIANA

Carnahan v. Moriah Property Owners Ass'n, Inc., 716 N.E.2d 437 (Ind. 1999) (holding that a party wishing to establish a recreational prescriptive easement must show by clear and convincing evidence that their use was adverse to the owner).

In 1972, the Carnahan family purchased property that included two and one half percent of Lake Julia, a private lake. Until the Carnahans filed suit in 1993, the family engaged in recreational activity on the lake such as boating, water skiing, and jet skiing. Moriah Property Owners Association, Inc. ("Moriah") owned approximately sixty-four percent of Lake Julia. Before Moriah took title to the