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Klamath Water Users Protective Assoc. v. Patterson, 191 F.3d 1115 (9th Cir. 1999)

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Klamath Water Users Protective Assoc. v. Patterson, 191 F.3d 1115 (9th Cir. 1999)

Government argued that Congress, through actions subsequent to the Act, encouraged the Department to investigate alternatives to the interceptor drain.

On the Government's first claim, the court held that the district court's finding that the Act mandated the Secretary to provide the interceptor drain was proper. In considering the plain language of the Act, the court acknowledged that the Act authorized the Secretary to construct, operate, and maintain the San Luis Unit, but did not mandate it. However, the court stated that the Act denied discretion as to what constituted the San Luis Unit through use of the word "shall" in requiring engineering features of the San Luis Unit to include particular characteristics (including necessary drains). The court determined that although the Department had discretion to decide whether to participate in construction of the drain for the San Luis Unit pursuant to the Act, once the Department committed to construction, it had no discretion in determining whether or not to include the interceptor drain.

Next, the court of appeals held that it was apparent from the language of the Department appropriations acts that it was not Congress's intention to repeal the drainage requirements, but merely to order the Secretary to develop a plan for addressing environmental problems associated with the discharge of effluent. The court noted that repeals by implication were not favored and that the intention of the legislature to repeal had to be "clear and manifest." The court recognized that the appropriations acts contemplated the existence of an interceptor drain and, therefore, Congress did not intend to repeal the drainage requirement.

Finally, in response to the Government's argument that Congress encouraged the Department to investigate drainage solutions other than an interceptor drain, the court acknowledged that Congress appropriated funds subsequent to the Act in order for the Bureau, in cooperation with other interested entities, to examine alternatives to the interceptor drain. The court confirmed that the ability of the Department to examine alternatives did not eliminate its duty to provide some form of drainage pursuant to the Act.

Megan Becher-Harris

Klamath Water Users Protective Assoc. v. Patterson, 191 F.3d 1115 (9th Cir. 1999) (holding that irrigators did not possess third-party beneficiary water rights, the government retained overall control over the dam, direct dam operations were subject to the Endangered Species Act, and Indian water rights were protected).

In 1905, the United States appropriated all available water rights in the Klamath and Lost Rivers pursuant to the Reclamation Act of 1902. In 1917, as part of the construction of a series of water diversion projects, the United States Bureau of Reclamation ("Reclamation") entered into a contract with the California Oregon Power Company ("Copco") under which Copco would construct the Link River Dam and convey it to the United States, but maintain

the right to operate it. The parties entered into the contract pursuant to “acts of Congress relating to the preservation and development of fish and wildlife resources.” Operation of the dam was subject to requirements of the Endangered Species Act (“ESA”). The Secretary of the Interior also recognized fishing and water treaty rights for a number of Oregon Indian tribes (“Tribes”). The United States and Copco were the only named parties to the contract and have since renewed for an additional fifty years. Due to the federal government’s various obligations related to the Klamath Basin and the Link River Dam, the United States and PacifiCorp (Copco’s successor in interest in operating and maintaining the dam) agreed upon a short-term modification of the contract in 1997. As part of Reclamation’s one-year interim plan for water distribution, PacifiCorp implemented the modifications with flow levels lower than specified by the Federal Energy Regulatory Commission (“FERC”). PacifiCorp implemented the plan contingent upon FERC concurrence.

The Klamath Water Users Protective Association and other irrigators in the Klamath Basin (“Irrigators”) filed a breach of contract action based on their alleged third-party beneficiary status. The district court granted PacifiCorp’s and Reclamation’s motions for summary judgment on PacifiCorp’s counterclaim seeking a declaration of rights with respect to the Irrigators. The issues on appeal included whether the Irrigators were third-party beneficiaries to the contract, whether PacifiCorp or Reclamation had the right to control the dam, whether PacifiCorp had a legal duty to operate the dam to meet its ESA obligation, and whether the Irrigators’ water rights were senior to those of the Tribes.

The court held that Irrigators did not possess third-party beneficiary water rights. Reclamation retained overall control over dam, the Irrigators’ rights to water were subservient to the ESA, and Indian water rights were protected. The court found that the Irrigators were not third-party beneficiaries, but rather were incidental beneficiaries that benefited from a government contract and could not enforce the contract absent a clear intent to the contrary. Furthermore, the language of the contract illustrated no intention of Copco or the United States to grant the Irrigators enforceable rights. The contract also controlled in determining that Reclamation retained overall authority over decisions on use of the Klamath Basin, and PacifiCorp did not control the dam. In determining that the Irrigators’ rights were subservient to the ESA, the court pointed to Reclamation’s status as a federal agency. Federal agencies have responsibilities under the ESA to meet specified requirements that overrode the water rights of the Irrigators. The court found that similar to its duties under the ESA, the United States, as a trustee for the Tribes, had a responsibility to protect their rights and resources. The Tribes held implied water rights guaranteed by treaty, and only Congress could abrogate such rights. Therefore, Reclamation had the authority to direct operation of the dam to comply with tribal water requirements.

The court concluded that under the language of the contract between Copco and Reclamation, the Irrigators did not possess any third-party beneficiary water rights and affirmed the district court’s grant of summary judgment to Reclamation and PacifiCorp.