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Certain Imperial Irrigation District Land Not Subject to Acreage Limitation of Federal Reclamation Laws

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CERTAIN IMPERIAL IRRIGATION DISTRICT LAND NOT SUBJECT TO ACREAGE LIMITATION OF FEDERAL RECLAMATION LAWS

WATER LAW–FEDERAL RECLAMATION PROJECTS: The United States Supreme Court holds that the 160-acre limitation for receipt of reclamation project waters does not apply to certain private lands in Imperial Valley, California. *Bryant v. Yellen*, 447 U.S. 352 (1980), *rehearing denied*, 448 U.S. 911 (1980).

INTRODUCTION

The federal reclamation program is responsible for the "greening" of the West. Such a large scale endeavor would inevitably encounter problems. Current problems arising from reclamation projects concern the development of private lands and the application of owner eligibility restrictions.[1] One such restriction was addressed by the United States Supreme Court in *Bryant v. Yellen.*[2] The fundamental issue in that case was whether the federal reclamation laws, which limit irrigation water deliveries from reclamation projects to 160 acres under single ownership, apply to Boulder Canyon Project waters being delivered to the Imperial Irrigation District.

BACKGROUND

In *Bryant v. Yellen*, a group of residents in the Imperial Valley (hereinafter Yellen group) brought suit to force compliance with certain provisions of the reclamation laws in the Imperial Irrigation District. Resolution of the controversy required legal review and analysis of the reclamation laws by the United States Supreme Court.

National Reclamation Act of 1902

Since the founding of the United States, Congress has encouraged the settlement and development of the public domain. The National Reclamation Act of 1902[3] (hereinafter the Act), as supplemented and amended, is the current means to implement this policy. The Act

1. Renda, *Owner Eligibility Restrictions–Acreage and Residency*, 8 Nat. Res. L. 265, 270 (1975).

2. 447 U.S. 352 (1980), *rehearing denied*, 448 U.S. 911 (1980).

3. Act of June 17, 1902 ch. 1093, 32 Stat. 388 (codified in scattered sections of 43 U.S.C.).

provides a mechanism whereby previously arid land can be made cultivable by the construction of irrigation works financed through a federal loan program. The Act's primary goal is to promote the family farm and to safeguard against speculative and monopolistic ownership of land and water privileges.[4] The United States Supreme Court has described this fundamental congressional policy as:

> one requiring that the benefits therefrom be made available to the largest number of people, consistent, of course, with the public good. This policy has been accomplished by limiting the quantity of land in a single ownership to which project water might be supplied. It has been applied to public land opened up for entry under the reclamation law as well as privately owned lands, which might receive project water.[5]

The land limitation proscription, which the Yellen group sought to enforce, was designed to assure the achievement of the Act's goal.[6] The current basis for the administration of this acreage limitation is found in section 46 of the Omnibus Adjustment Act of 1926.[7] Section 46 governs the making of water delivery contracts between the Secretary of Interior and irrigation districts. These contracts are to require that any lands held in excess of 160 acres will be appraised by the Secretary of Interior.[8] Water will not be delivered to excess lands if the owner refuses to execute a recordable contract for the sale of his lands at terms and conditions specified by the Secretary. The Yellen group claimed that, if these contractual requirements were complied with in the Imperial Valley, there would be excess land available for its members to purchase at affordable prices below the market value for irrigated land. This assertion gave the Yellen group standing to press the case on its own behalf.[9]

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4. Taylor, *The Excess Land Law: Execution of a Public Policy*, 64 Yale L.J. 477, 484-486 (1954).

5. Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 292 (1958).

6. The land limitation provision is found in section 5 of the Act: *No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner . . . and no such right shall permanently attach until all payments therefor are made.* 43 U.S.C. § 431 (1976). The section also contains a residency restriction which is omitted because it is beyond the scope of this Note and was not considered by the Court in Bryant v. Yellen.

7. 43 U.S.C. § 423(e) (1976).

8. *Id.* The Secretary, when appraising excess land, must exclude the value added to the land by virtue of the irrigation project. The acreage limitation is an anti-monopoly provision and the appraisal requirement is an anti-speculation device to control prices. The Yellen Group desired to purchase the excess lands which might become available at prices below the market value for irrigated land if section 46 of the Act were held applicable in the Imperial Valley.

9. The Yellen group had originally sought to intervene in the Department of the Interior's suit for declaratory judgment against the Imperial Irrigation District, but its application

The excess land provisions form an important cornerstone in the preservation of the public policy behind reclamation law.[10] Throughout the history of federal reclamation, however, administrative nonenforcement of these provisions has allegedly frustrated congressional intent by allowing water delivery to excess land.[11] Despite many attempts to eliminate these provisions, Congress has consistently reaffirmed the general policy of applying the 160-acre limitation to federal reclamation projects.[12]

The Boulder Canyon Project Act and the Imperial Valley

The antecedent to the conflict in *Bryant v. Yellen* was the contract between the United States and the Imperial Irrigation District under the Boulder Canyon Project Act of 1929[13] (hereinafter Project Act). The underlying purpose of the contract was to reclaim the Imperial Valley. The Imperial Valley is located south of the Salton Sea in southeastern California and in its natural state is an arid desert. In 1901, irrigation began in the valley by diverting water from the Colorado River. In 1922, California joined six other states[14] in the Colorado River Basin in an agreement known as the Colorado River Compact (hereinafter Compact).[15] This Compact provided for allocation of waters among the Upper and Lower Basin states and among the states in each Basin, flood control, regulation of water supplies on a predictable and useful basis, and construction of a canal to the Imperial Valley that did not pass through Mexico.[16] The Compact also provided that present perfected rights to the beneficial use of waters of the Colorado River be unimpaired by the Compact.[17] In *Bryant v. Yellen,* the landowners (hereinafter Bryant group) relied heavily on this provision of the Compact when they argued that the acreage lim-

was denied. The government lost in the United States District Court and decided not to appeal. United States v. Imperial Irrigation District, 322 F. Supp. 11 (S.D. Cal. 1971). The Yellen group again sought leave to intervene and prosecute the appeal in the government's suit against the District. The Court of Appeals allowed intervention. The court found that the injury alleged by the Yellen group was a direct result of the non-enforcement of section 46 of the Omnibus Adjustment Act of 1926. United States v. Imperial Irrigation District, 559 F.2d 509, 522-524 (1977). The United States Supreme Court affirmed the Court of Appeals on standing. Bryant v. Yellen, 447 U.S. 352, 366 (1980).

10. 2 WATERS & WATER RIGHTS § 120 at 209 (1967).

11. Taylor, *Water, Land and Environment Imperial Valley: Law Caught in the Winds of Politics,* 13 NAT. RES. J. 1, 32 (1973).

12. Renda, *Owner Eligibility Restrictions–Acreage and Residency,* 8 Nat. Res. L. 265, 279 (1975).

13. 43 U.S.C. § § 617-617v (1976).

14. Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.

15. The Compact can be found at 70 CONG. REC. 324 (1928).

16. 447 U.S. 352, 357 (1980).

17. *Id.*

itation did not apply to lands already under irrigation at the effective date of the Project Act.

The Project Act ratified and implemented the Compact. Through reclamation program funding, the Project Act provided for the construction of the Boulder Dam (now Hoover Dam) and the Imperial Dam, from which water would be diverted to a canal running to the Imperial Valley. On the date the Project Act became effective, the Imperial Irrigation District was diverting and delivering water to 424,145 acres of privately owned farmland.

The Project Act includes terms and conditions that govern the relationship between the federal government and irrigation districts. Several sections are critical to an understanding of the controversy which arose in *Bryant v. Yellen.*

Section 4(b) of the Project Act requires the Secretary of Interior to make provision for revenues with the irrigation districts "by contract or otherwise" to ensure payment of all "expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law."[18] Section 6 mandates that the works authorized are to be used: "First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River Compact; and third, for power."[19]

Section 9 of the Project Act authorizes the opening of public lands that could become irrigable by the project in accordance with the 160-acre limitation of the reclamation law.[20] Section 14 states that the Project Act is supplemental to the Act itself, "which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided."[21]

The Yellen group contended that section 14 read in conjunction with section 4(b) of the Project Act explicitly called for the reclamation laws to govern contracts between irrigation districts and the United States. The Bryant group asserted that the qualifying clause of section 14, "except as otherwise herein provided," subordinated section 14 to other specific provisions in the Project Act, most importantly section 6. The Bryant group claimed that section 6 conflicted with the application of the excess land provisions of section 46 of the Omnibus Adjustment Act of 1926, thereby rendering the

18. 43 U.S.C. § 617c(b) (1976).
19. *Id.* at § 617e.
20. *Id.* at § 617h.
21. *Id.* at § 617m.

latter provisions inapplicable to the Imperial Irrigation District. That group also contended that if Congress had intended for the acreage limitation to apply to private lands in the Imperial Valley, Congress would have done so explicitly, as it did for public lands under section 9.

The United States entered into a contract with the Imperial Irrigation District in 1932 pursuant to section 4(b) of the Project Act; this contract included no acreage limitation provision for private lands. As required by law,[22] the court issued a final judgment on the contract between the District and the United States on July 1, 1933.[23] That judgment confirmed the authorization and the validity of the contract in all respects. In the proceedings leading up to the judgment, Secretary of Interior Ray Lyman Wilbur submitted a letter (hereinafter Wilbur Letter) on February 24, 1933 to the District addressing the question of whether the 160-acre limitation of section 5 of the Act was applicable to the Imperial Valley. Among other things, the letter stated:

> Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use or delivery of water to be furnished these areas.[24]

One week later, the Assistant Commissioner and Chief Counsel of the Bureau of Reclamation wrote a letter stating that the Department of Interior's interpretation applied not only to section 5 of the Act but also to section 46 of the 1926 Act.[25]

The Wilbur letter expressed the view of the Department of Interior until 1964 when, in respnse to congressional inquiries in 1961 and 1964 concerning non-enforcement of the limitation, the Department adopted the view of its Solicitor. The Solicitor determined that the limitation on water deliveries to excess land should have been applied to Imperial Valley lands in private ownership pursuant to section 14 of the Project Act.[26] Attempts by the Department to enforce compliance with the excess land provision were the genesis of the contro-

22. A final judgment is required under California law.

23. Hewes v. All Persons, No. 15460, Superior Court, Imperial County (App. to Pet. in No. 79-435, 120a-154a (1933)).

24. App. 177a, 71 Interior Dec. 530 (1964).

25. App. 179a, 71 Interior Dec. 531 (1964).

26. Taylor, *supra* note 10, at 11-13.

versy in *Bryant v. Yellen.* When the Imperial Irrigation District refused to renegotiate its contract to incorporate the excess land provision, the United States brought an action for declaratory relief.[27]

BRYANT v. YELLEN

On certiorari, the United States Supreme Court held that the 160-acre limitation did not apply to certain private lands in the Imperial Valley. The Court reasoned that section 6 of the Project Act, requiring satisfaction of present perfected rights, supersedes section 46 of the 1926 Act, which limits the maximum amount of acreage in single ownership that can receive project waters. Present perfected rights are those water rights acquired in accordance with state law, exercised by the actual diversion of a specific quantity of water, and applied to a defined area of land.[28] The Court determined that, prior to the effective date of the Project Act, the District had a privilege and a duty under state law to service farms regardless of their acreage.[29] Therefore, this characteristic of California water law placed an unavoidable limitation on the Secretary's power to enforce the excess land provision in the District.[30]

To support its construction of the Project Act, the Court considered legislative history. The opinion accorded some weight to the fact that the 160-acre limitation was deleted from the bill finally enacted into law.[31] The Court also relied on the "contemporaneous construction" of the Project Act given in the Wilbur Letter and the subsequent acceptance of this view during the incumbencies of six successive Secretaries.[32]

In addition to the irrigation of 424,145 acres of privately owned farmland at the inception of the Project Act, an additional 14,000 acres were being irrigated at the time of *Bryant v. Yellen.* The Court remanded the case for further proceedings, if necessary, to determine the question of whether the acreage limitation applied to the 14,000 acres.[33]

ANALYSIS

In *Bryant v. Yellen,* the United States Supreme Court extended the present perfected rights requirement of section 6 of the Project

27. United States v. Imperial Irrigation District, 322 F. Supp. 11 (1971).
28. 447 U.S. 352, 369 (1980).
29. *Id.* at 372.
30. *Id.* at 370.
31. *Id.* at 374.
32. *Id.* at 377.
33. *Id.* at 379.

Act to individual landowners within an irrigation district. The Court had addressed the application of this requirement only once before. In that case, *Arizona v. California,*[34] the basic controversy involved interstate allocation of Colorado River water. The Court looked to the meaning and scope of the Project Act and, of significance in *Bryant v. Yellen,* recognized that section 6, which requires satisfaction of "present perfected rights," placed a significant limitation on the Secretary of Interior's power.[35] In a *Per Curiam* and Supplemental Decree[36] which implemented the Court's decision in *Arizona v. California,* the Imperial Irrigation District, and not individual landowners within the District, was named the claimant of the present perfected rights.[37] By broadening the scope of present perfected rights to include individual landowners within an irrigation district, the Court in *Bryant v. Yellen* has further confined the Secretary's power to allocate Colorado River waters consistent with reclamation law.

In extending this perfected right to individual landowners, the Court emphasized that it is a water right originating under state law. State water law must be consulted in determining the content and characteristics of the water right adjudicated to the district.[38] The state right is to be defined without regard to the existence of any duty imposed by federal law.[39] The Court determined that, under state law, the Imperial Irrigation District is a trustee of the water rights for the benefit of the landowners and, as such, the beneficiaries had a perfected right to utilize water without regard to the size of the land holding prior to the enactment of the Project Act.[40]

This construction of "present perfected rights" undermines the purposes of the Act and sets aside a major eligibility criteria for receipt of federal funding under the Act.[41] The Court could have avoided this result and brought federal and state law into harmony by adopting the analysis of the court of appeals on the issue. In its opinion, the court of appeals determined that the irrigation district, not individual landowners, held legal title to water rights under California law. Those rights are held in trust for the common benefit of all landowners, and not for any individual landowner.[42] Because in-

34. Arizona v. California, 373 U.S. 546 (1963).
35. 373 U.S. at 584.
36. Arizona v. California, 439 U.S. 419 (1979).
37. *Id.* at 429.
38. 447 U.S. 352, 371 (1980).
39. *Id.*
40. *Id.* at 372-73.
41. 43 U.S.C. § 431 (1976).
42. United States v. Imperial Irrigation District, 559 F.2d 509, 529 (1977).

dividual landowners have no vested rights to a specific quantity of water, present perfected rights are satisfied by delivering out to the Imperial Irrigation District all the water to which it is entitled. Excess land could be deprived of water without impeding the total amount of water delivered to the District.

The United States Supreme Court case of *Ivanhoe Irrigation District v. McCracken*[43] supports the court of appeals' decision denying exclusion of the 160-acre limitation. In *Ivanhoe,* the Court recognized that where a reclamation project has been exempted from the acreage limitation because of its peculiar circumstances, it has been done by express congressional enactment.[44] The Court in *Bryant v. Yellen* nevertheless distinguished *Ivanhoe* because that case did not involve the satisfaction of present perfected rights.[45] Further, the *Bryant v. Yellen* Court noted that "satisfaction of perfected rights" was an effective expression of congressional exemption.[46] The reasons for this retreat from a strict construction of the reclamation laws as enunciated in *Ivanhoe* are not readily apparent from the Court's legal analysis.

The Court's attempt to bolster its conclusions by a review of the Project Act's legislative history is less than compelling. The Court itself acknowledged the weakness of this type of evidence.[47] In its view, however, nothing suggested that Congress intended to include the acreage limitation. Because present perfected rights had been recognized in the Project Act, the Court found it a fair inference that Congress intended an exemption for private landowners.[48]

Perhaps the most persuasive factor in the case in support of the Court's construction of the Project Act was the contemporaneous view as expressed in the Wilbur Letter and the subsequent reliance on this letter by the landowners in the District. The Court noted that the letter was not officially repudiated by any Secretary of Interior until 1964.[49] In essence, the Court seems to be adopting an equitable estoppel notion in construing the Project Act. Its reliance on the Wilbur Letter may have been misplaced. First, the Wilbur Letter was not an official ruling or order and, therefore, any reliance by the parties would be unjustified. Second, there were contrary views and concerns expressed which indicate that the inapplicability

43. 357 U.S. 275 (1958).
44. *Id.* at 292.
45. 447 U.S. at 372.
46. *Id.* at 373 n.24.
47. *Id.* at 375.
48. *Id.* at 374-78.
49. *Id.* at 377.

of the acreage limitation was not a settled issue.[50] Third, administrative agency interpretation of statutes has no binding effect on the courts.[51] The real danger in the weight given to the Wilbur Letter and to the administrative non-enforcement of the acreage limitation is the precedent it sets in defining congressional intent. It rewards administrative acts of omission at the expense of legislative enactments.

In summary, the Court's decision in *Bryant v. Yellen* seems to be based more on equity than on law or precedent. Whether the same result is to be contemplated absent the administrative history of this case is doubtful.

CONCLUSION

The Supreme Court in *Bryant v. Yellen* has finally settled the excess land issue for land in the Imperial Valley under irrigation at the effective date of the Project Act. In so doing, the Court gave little weight to the purposes and vital policies behind the reclamation laws. Instead, the Court took the most expedient route. It avoided the redistribution of vast acres of irrigable land in one of the richest agricultural regions in the Country. The unique facts present in *Bryant v. Yellen* should limit the impact on the Secretary of Interior's power to enforce the excess land provision elsewhere.

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50. Hearings on H.R. 3961 Before Senate Commerce Subcommittee, 78th Cong., 2nd Sess., 632 (1944); 1945 opinion of Solicitor Fowler Harper on the applicability of the excess land provisions in Coachella Valley, California, M-33902 (May 31, 1945), found as Appendix H to the Barry Opinion 71 I.D. at 533-48; Memorandum in behalf of the United States on the relevance of non-compliance with acreage limitation requirements of reclamation law, No. 10 Original, Arizona v. California, 357 U.S. 902 (1957); Hearings before Senate Subcommittee on Irrigation and Reclamation on S. 1425, 2241, and 3448, 85th Cong., 2nd Sess. 83 (1958); Memorandum of the Chairman of the Subcommittee on Irrigation and Reclamation to Members of the Senate Committee on Interior and Insular Affairs, Apr. 25, 1958, 11-24; Solicitor's Opinion, 71 I.D. 496 (1964); *supra*, n. 11 at 7-13.

51. *See*, K. DAVIS, ADMINISTRATIVE LAW TEXT 545-56 (1972).