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Supreme Court Rejects Water as a Locatable Mineral for Federal Mining Claims

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RECENT DEVELOPMENTS

SUPREME COURT REJECTS WATER AS A LOCATABLE MINERAL FOR FEDERAL MINING CLAIMS

WATER LAW–MINING LAW: The United States Supreme Court holds that water is not a locatable mineral under federal mining law and, therefore, a patent to the land on which water is discovered may not be acquired. *Andrus v. Charlestone Stone Products Co., Inc.*, ____U.S. ____, 98 S. Ct. 2002 (1978).

The western United States have historically relied on the doctrine of prior appropriation to allocate scarce water resources. The basic concept underlying this doctrine provides that the person who first applies water to a beneficial use has a better right to that water than subsequent water users. *Andrus v. Charlestone,*[1] on appeal to the United States Supreme Court, involved the determination of whether water is a locatable and claimable mineral under federal mining law.[2] The Court unanimously rejected this theory thereby preventing what would have amounted to a radical departure from traditional water rights acquisition in the West.

Under federal mining law a citizen can file a claim on certain federal lands for the purpose of extracting valuable minerals. If specified conditions are met, the claimant can obtain a patent to the land, thereby acquiring fee simple title.[3] Charlestone Stone Products Company located 23 mineral claims near Las Vegas, Nevada, in 1942, and water was discovered on its Claim 22 in 1962. The Secretary of the Interior in 1965 moved to invalidate all the claims since only common sand and gravel had been found on them.[4] An administrative law judge, after hearing evidence on whether the sand and gravel deposits were "valuable," found that only Claims 9 and 10 met the value test. Both parties appealed, to the Interior Board of Land Appeals which reversed as to Claim 9, but affirmed the validity of Claim 10.[5] Charlestone appealed to the U.S. District Court of

1. Andrus v. Charlestone Stone Products Co., Inc., ____U.S. ____, 98 S. Ct. 2002 (1978).
2. Act of May 10, 1872, CHAP. CLII, 17 Stat. 91.
3. 30 U.S.C. §29 (1976).
4. Sand and gravel are not "valuable" minerals under the federal mining laws. *See also,* Anchorage Sand and Gravel Co., Inc., v. Schubert, 114 F. Supp. 436 (D. Alaska 1953), *aff'd,* 224 F.2d 623 (9th Cir. 1955); 30 U.S.C. §611 (1976).
5. 9 I.B.L.A. 94 (1973).

Nevada which ruled that at least Claims 1 through 16 were valid and that access to Claim 22's water be allowed so that Charlestone could continue to use the water for processing sand and gravel extracted from the other claims.

The government appealed to the Ninth Circuit Court of Appeals, which affirmed the district court.[6] The Ninth Circuit, however, held that Claim 22 was valid in itself. The court determined, sua sponte, that water in the West is a "valuable mineral" within the meaning of the federal mining statutes because of water's intrinsic value, although Claim 22's water had an additional value in preparing sand and gravel for sale. The effect of the Ninth Circuit's decision was to make valid a mineral claim on federal land solely on the basis of the water discovered thereon. A claimant could, by the court's reasoning, gain title to land and acquire the water rights merely by discovering water on the land.

The government petitioned the United States Supreme Court for certiorari, raising the single issue of whether water is a locatable mineral under the federal mining law, thereby validating a claim solely by discovery of water on that claim. The Court, *per* Marshall, reversed the Ninth Circuit for two reasons: one, water was never intended by Congress to be a locatable mineral for mining claims; and two, Congress did not intend to overlap state water rights acquisition law.

The Court's test to determine whether a mineral is locatable is that it must be the type of valuable mineral that the 1872 Congress intended to be the basis of a valid claim.[7] In 1883 and 1886, the Secretary of the Interior ruled that water was not a locatable mineral under the 1872 act.[8] And in 1955, Congress amended the general mining laws[9] in order to prevent their abuse by persons making claims unrelated to actual mining. The amendment listed common varieties of minerals which are not locatable for claim purposes, but did not specifically list water. The Court, however, found that this exclusion does not imply that water is a locatable mineral, and disagreed with the Ninth Circuit's literal interpretation of the federal mining law. The Justices agreed that water is a mineral, and also valuable, but held that water by itself cannot support a mining claim.

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6. 553 F.2d 1209 (9th Cir. 1977).

7. The test also includes the provisions of the 1955 amendment to the mining act. 30 U.S.C. §611 (1976).

8. *See,* William A. Chessman, 2 Pub. Lands Dec. 774 (1883), and, Charles Lennig, 5 Pub. Lands Dec. 190 (1886).

9. 30 U.S.C. §611 (1976).

Congress incorporated into the 1872 mining law two provisions from the 1866 and 1870 mining acts[10] which made it clear that water rights could only derive from local or state law. The Court stated that, "with respect to federal lands Congress chose to subject only mining to comprehensive federal regulation. When it passed the . . . mining laws, Congress clearly intended to 'preserve pre-existing [water] right[s].' "[11] The Court also recognized the practical consequences of a system of federal water rights acquisition. Two overlapping systems for acquiring water rights would create a myriad of problems among water users. If water were recognized as a locatable mineral, a claimant could, consistent with federal mining claims rights,[12] ignore previous water users and deplete all the water from the claim. Justice Marshall added that with respect to federal recognition of local water rights law, "it defies common sense to assume that Congress, when it adopted this policy, meant at the same time to establish a parallel federal system for acquiring private water rights. . . ."[13]

The Court found that the mining statutes, their histories, administrative and judicial decisions, and pragmatic considerations all supported their decision. The decision of the Ninth Circuit was therefore reversed. Justice Marshall stated, "[w] e decline to effect so major an alteration in established legal relationships based on nothing more than an overly literal reading of a statute, without any regard for its context or history."[14]

The Supreme Court refused to adopt a middle ground of recognizing the mineral claim method of acquiring a water right but subjecting such an acquisition to previously acquired water rights in the area or state. The Court's reversal can be viewed as an act of judicial statesmanship, correcting an improper, and perhaps impromptu, lower court decision. There is no doubt, however, that the decision is a victory for the states, especially the Western states in their fight against federal encorachment of their natural resources.

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10. 30 U.S.C. § § 51, 52 (1976).

11. 98 S.Ct. at 2008.

12. *See,* Union Oil Co. v. Smith, 249 U.S. 337 (1919) concerning exhaustion of all minerals from a claim.

13. 98 S.Ct. at 2008.

14. 98 S.Ct. at 2009. It is interesting to compare this case, construing water not to be a "valuable," locatable mineral under the federal mining statutes, with United States v. Union Oil Co. of California, 549 F.2d 1271 (9th Cir. 1977), *cert. denied* 98 U.S. 1462 (1978). The latter case, decided before Andrus v. Charleston, construed water as a mineral under the Stock-Raising Homestead Act of 1916 in order to hold that the United States had reserved geothermal water resources underlying patented land obtained by citizens pursuant to the Act.