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Navajo Nation v. Department of the Interior, 876 F.3d 1144 (9th Cir. 2017)

Jaclyn R. Van Natta

In *Navajo Nation v. Department of the Interior*, the Navajo Nation challenged the Department of the Interior’s 2001 and 2008 water allocation guidelines and asserted that under NEPA and the APA the guidelines violated the Navajo Nation’s water rights. The Navajo Nation also asserted a breach of trust claim against the United States. After nearly a decade of attempted settlement negotiations, the Navajo Nation reasserted its complaints. The District Court for the District of Arizona denied the Navajo Nation’s motions, and the Navajo Nation appealed to the Ninth Circuit Court of Appeals, which determined the Navajo Nation lacked standing, leaving the Navajo Nation’s water rights unadjudicated and unquantified.

I. INTRODUCTION

In 1868, the Navajo Nation (“Nation”) was established by treaty.¹ The United States has a fiduciary duty arising from its trust obligation to protect the Nation’s land and resources—including the Nation’s water rights; however, the Nation’s water rights have yet to be quantified.² The Nation challenged the Department of the Interior’s (“DOI”) Surplus and Shortage Guidelines³ (collectively, “Guidelines”) for water allocation in the Colorado River basin.⁴ The Guidelines dictate how the Secretary of the Interior (“Secretary”) shall allocate water to the lower basin states in times of surplus and shortage.⁵ The Nation argued that the Guidelines violated the Administration Procedure Act (“APA”) and the National Environmental Policy Act (“NEPA”) because the Guidelines failed to adequately consider the Nation’s water needs and violated the United States’ fiduciary duty to the Nation.⁶ Neither the United States District Court for the District of Arizona nor the United States Court of Appeals for the Ninth Circuit reached the merits of the case.⁷ As a result, the Nation’s water rights have yet to be adjudicated, and the water in the Colorado River Basin continues to be highly coveted.⁸

1. *Navajo Nation v. Dep’t. of the Interior*, 876 F.3d 1144, 1152 (9th Cir. 2017).

2. *Id.*

3. *Id.* (The Surplus Guidelines were promulgated in 2001 and the Shortage Guidelines in 2008).

4. *Id.*

5. *Id.* at 1157.

6. *Id.*

7. *Id.*

8. *Id.* at 1156.

II. FACTUAL & PROCEDURAL BACKGROUND

The Nation lives on the largest Indian reservation in the United States and is the largest non-federal riparian land owner along the Colorado River, which lies almost entirely within the drainage of the Colorado River basin.⁹ Although the water needs of the Nation is evident, the Nation's water rights have yet to be quantified.¹⁰ Due to the highly contested and pervasive management of the water in the Colorado River basin, the procedural history of this case spans several decades.¹¹

A. *The Law of the River*

The seven states in the Colorado River basin formed the 1922 Compact ("Compact") to ensure that the Colorado River was a regular, dependable source of water.¹² The Compact divided the seven affected states of the Colorado River into the upper and lower basin.¹³ Lower basin states included Arizona, California, and Nevada.¹⁴ The terms of the Compact entitled the lower basin states to 7.5 million acre-feet of water per year ("mafy"). It also ensured that the rights within the states would not change, and the United States' fiduciary duty to the tribes would not be altered.¹⁵

The introduction of the Boulder Canyon Project Act ("BCPA") in 1928 set into motion the construction of the Hoover Dam to improve water allocation in shortage years.¹⁶ In 1929, BCPA became effective after the upper and lower basin states, with the exception of Arizona, ratified the Compact.¹⁷ Because Arizona failed to ratify the Compact, the mafy numbers previously negotiated under the Compact did not become immediately effective.¹⁸ However, the Compact authorized the Secretary to enter into water contracts with California, Arizona, and Nevada, which held them to their 4.4, 2.8, and 0.3 mafy allotments, respectively.¹⁹ Water allotment disputes continued between California and Arizona, until Arizona sued California in 1952.²⁰ Out of this dispute came the 1964 Decree, which reaffirmed the BCPA mafy numbers for California, Arizona, and Nevada, and reserved to the Secretary the power to apportion the Colorado River waters. The Guidelines were a result of this power.²¹

9. *Id.* at 1152.

10. *Id.*

11. *Id.* at 1153.

12. *Id.* at 1153

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 1154.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

The United States Supreme Court in *Arizona v. California* further affirmed the *Winters* Doctrine, holding that the United States impliedly reserved the waters necessary to achieve the primary purpose of a reservation when it withdrew the land.²² The 1964 Decree used the *Winters* Doctrine to adjudicate and quantify the water rights of five Native American Tribes when partitioning the Colorado River, but the Nation was not among the five.²³ The Nation asserted that it too had federally reserved water rights to the Colorado River because “the United States impliedly reserved for the Nation ‘the waters without which their lands would [be] useless.’”²⁴ The Nation has yet to have its water rights definitively stated.²⁵

B. Procedural History

The Secretary adopted the Colorado River Interim Surplus Guidelines (“Surplus Guidelines”) in 2001 to establish how a surplus of water would be allocated.²⁶ The Nation, along with the Colorado River Basin Ten Tribes Partnership, opposed the Surplus Guidelines.²⁷ They submitted comments stating the Surplus Guidelines were fundamentally, deeply, and fatally flawed, and not only did they fail to quantify the Nation’s water rights in the lower basin, but they lacked consideration for Indian trust assets.²⁸ The Secretary dismissed these complaints by stating that the Surplus Guidelines would not alter tribal entitlements.²⁹

Displeased with the Secretary’s statement and unsatisfied with the Surplus Guidelines, in March of 2003, the Nation filed a complaint against the DOI, the Bureau of Reclamation, and the Bureau of Indian Affairs (collectively “Federal Defendants”).³⁰ The Nation alleged that the United States breached its obligation to protect the Nation’s water rights, and that the Secretary’s promulgation of the Surplus Guidelines violated NEPA and APA standards.³¹ State and local government entities from the lower basin states intervened as defendants, and litigation was stayed in October 2004 to reach a settlement agreement.³² However, the parties never reached an agreement, and the stay postponed the Nation’s water rights from being adjudicated for nearly a decade.³³

22. *Id.* at 1155; *See Arizona v. California*, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963); *See Arizona v. California*, 376 U.S. 340, 84 S.Ct. 755, 11 L.Ed.2d 757 (1964).

23. *Id.*

24. *Id.* at 1156.

25. *Id.* (citing *Arizona v. California*, 373 U.S. 546, 600 (1963); *See Arizona v. Winters*, 207 U.S. 564, 577 (1908); *See also Cappaert v. United States*, 426 U.S. 128, 138 (1976).

26. *Nation*, 876 F.3d at 1157.

27. *Id.*

28. *Id.* at 1158.

29. *Id.*

30. *Id.* at 1159.

31. *Id.* at 1159-60.

32. *Id.* at 1159-60.

33. *Id.* at 1160.

In 2008, the Secretary promulgated Shortage Guidelines.³⁴ In 2013, the stay was lifted, litigation resumed, and the Nation amended its complaint twice to properly challenge the new Shortage Guidelines.³⁵ The district court held that the Nation's NEPA claims lacked standing and that sovereign immunity barred the Nation's breach of trust claims against the United States.³⁶ After the district court dismissed the Nation's complaint without leave to amend and without prejudice, the Nation filed a Rule 60(b)(6) motion for relief from final judgement.³⁷ The Nation argued that because the statute of limitations had already run, the district court's dismissal acted more like a dismissal with prejudice.³⁸ Further, the district court denied the Nation's Rule 60(b)(6) motion.³⁹ On appeal to the Ninth Circuit, the Nation challenged the district court's holdings of both orders.⁴⁰

III. ANALYSIS

On appeal, the Ninth Circuit reviewed the Nation's arguments regarding: (1) its standing, (2) its breach of trust claims in regard to sovereign immunity, and (3) its Rule 60(b)(6) motion for relief from judgment.

A. *Standing*

The Ninth Circuit concluded that the Nation failed to establish it had suffered an injury and thus did not have standing to sue.⁴¹ To arrive at this conclusion, the court first assessed whether the Nation had standing to bring a NEPA claim.⁴² For a plaintiff to establish standing, three elements must be met: (1) a concrete, particularized, and imminent injury must be present; (2) the defendant's challenged conduct must have caused the injury; and (3) it must be likely that a decision in the plaintiff's favor would cure the injury.⁴³ However, because the Nation alleged a procedural injury, the standard for immediacy of the injury was relaxed.⁴⁴ The Nation only needed to prove that via a chain of events it would have been "reasonably probable" that an injury could have resulted.⁴⁵

The Nation asserted its first procedural injury was due to the fact that the Guidelines did not quantify the Nation's water rights and

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 1162.

42. *Id.* at 1161.

43. *Id.* at 1160.

44. *Id.*

45. *Id.* (See *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961, 975 (9th Cir. 2003) (established the "reasonably probable" standard)).

disregarded the Nation's reserved rights under *Winters*.⁴⁶ The court held that the Nation failed to establish it had standing under the first alleged injury because the chain of events it posited was too speculative, was not supported by any facts, figures, or data, and failed to show how the Guidelines would have “impede[d] the ascertainment and declaration of the Nation's *Winters* rights.”⁴⁷

The Nation also asserted that until the Nation's water rights were quantified, the Nation's water needs would not be met. Although the court found this alleged injury more persuasive, it too was insufficient to convey standing.⁴⁸ Water constraints already in effect under the BCPA and the 1964 Decree apportioned water amounts, and the Guidelines merely dictated when there was a surplus or shortage.⁴⁹ Therefore, it could not be established that the Guidelines independently caused procedural injury to the Nation.⁵⁰

Further, the court held that the Nation unraveled its own argument by citing cases that reiterated the standard that a plaintiff “must identify how the challenged action threatens, to a reasonable probability, some separate interest.”⁵¹ Here, the Nation failed to show how the Guidelines threatened “the Nation's unadjudicated water rights or its practical water needs.”⁵² Therefore, because of the aforementioned mistakes, the court affirmed that the Nation's NEPA claims lacked standing.⁵³

B. Sovereign Immunity

The court further addressed the issue of sovereign immunity. The United States can only be sued if it consents, or its immunity is waived.⁵⁴ Before the court could hold whether 5 U.S.C. § 702 waived the United States' sovereign immunity, and to what extent § 704 limited the waiver to final agency action claims, it had to reconcile its own conflicting opinions.⁵⁵ It analyzed the holdings in *Presbyterian Church v. United States* and *Gallo Cattle Co. v. U.S. Department of Agriculture*.⁵⁶ The former case held that § 702 did not limit the waiver of sovereign immunity to cases that challenged agency action, while the latter case held that § 702

44. *Id.*

48. *Id.* at 1162-64.

49. *Id.* at 1165.

50. *Id.* at 1166.

51. *Id.*

52. *Id.* at 1166-67.

53. *Id.* at 1167.

54. *Id.*

55. *Id.* at 1168-69 (*See* *United States v. Sherwood*, 312 U.S. 584, 586 (1941)).

56. *Id.* at 1168.

57. *Id.* at 1170-71 (discussing *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518 (9th Cir. 1989); *Gallo Cattle Co. v. U.S. Dep't of Agric.*, 159 F.3d 1194 (9th Cir. 1998)).

contained several limitations, such as the final agency action requirement of § 704.⁵⁷

The court concluded that *Gallo Cattle* was valid for cases dealing with APA causes of action, and *Presbyterian Church* was valid where the case dealt with non-APA claims and sovereign immunity.⁵⁸ Therefore, the district court's dismissal of the Nation's breach of trust claim based solely on sovereign immunity was inappropriate and the court remanded the Nation's claim with permission to amend.⁵⁹

C. Rule 60(b)(6) Relief from Judgment

Finally, the court evaluated whether the district court's denial of the Nation's Rule 60(b)(6) motion to amend its pleadings was an abuse of discretion.⁶⁰ The court agreed with the Nation's assertion that once the statute of limitations had run, a dismissal without prejudice acted like a dismissal with prejudice.⁶¹ However, because the Nation failed multiple times to amend its complaint before final judgment, the court held that the district court acted within its discretion when it refused the Nation's Rule 60(b)(6) motion—a motion reserved for extraordinary circumstances.⁶²

IV. CONCLUSION

The Nation ultimately failed to establish that it had standing because it did not prove that the Guidelines had caused it injury. Although the Nation's water rights were not adjudicated, this case reconciled the court's conflicting precedent concerning APA § 702 waiver of sovereign immunity and its previously held limitations. The Nation will not be entitled to amend its complaint for its NEPA claims. However, the Nation will get a second chance to amend and retry its breach of trust claim, and perhaps finally have its water rights adjudicated and quantified. This case serves as a valuable lesson to other Indian nations that they must formulate water rights claims that can easily survive both standing and sovereign immunity.

58. *Id.* at 1172 (See *Presbyterian Church*, 870 F.2d at 525; See *Gallo Cattle Co.*, 159 F.3d at 1198).

59. *Id.*

60. *Id.* at 1172-73.

61. *Id.* at 1173-74.

62. *Id.* at 1173-74.

63. *Id.* at 1174.