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Maricopa-Stanfield Irrigation & Drainage Dist. v. Robertson, 123 P.3d 1122 (Ariz. 2005)

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claimed the runoff caused an accumulation of sediment in the ponds of a neighboring subdivision.

The ECO sought partial summary judgment on two issues: (1) the developers' general liability for storm-water discharges containing sediment occurring since the commencement of construction; and (2) liability for twenty-seven specific dates of such discharge.

The developers' permit, first issued by the EPA, and later by the state of Texas, required that the sediment be removed "at a frequency to minimize further negative effects, and whenever feasible, prior to the next rain event." The ECO's evidence showed that the commencement of the discharges coincided with the beginning of construction in December 2001. The ECO brought the problem to the developer's attention in mid-2002. The developers offered to remove sediment from a portion of one of the ponds approximately one year later.

The United States District Court for the Northern District of Texas, Fort Worth Division stated that the CWA's objective is to restore and maintain the chemical, physical, and biological integrity of United States waters, and that Congress established the National Pollution Discharge Elimination System ("NPDES") permit program to achieve the CWA's objectives. As such, the discharge of pollutants into waters of the United States is unlawful unless one obtains an NPDES permit and complies with its terms. Here, the developers failed to comply with the terms of their permit. The court found that as a matter of law, the developer's offer in 2003 did not constitute removing the sediment "at a frequency to minimize further negative effects" as required by the permit.

The court granted summary judgment in the ECO's favor regarding this first issue, but found that material issues of fact existed regarding the question of specific dates.

Kevin Kennedy

STATE COURTS

ARIZONA

Maricopa-Stanfield Irrigation & Drainage Dist. v. Robertson, 123 P.3d 1122 (Ariz. 2005) (holding agricultural landowners did not have vested rights to irrigation water from the Central Arizona Project because the landowners were neither parties to, nor third party beneficiaries of the water delivery contract).

The Central Arizona Water Conservation District ("CAWCD") entered into a master contract with the United States and several sub-contracts with the Maricopa-Stanfield Irrigation & Drainage District and the Central Arizona Irrigation and Drainage District ("Irrigation

Districts”). These contracts govern allocation of Central Arizona Project (“CAP”) water. Pursuant to federal law, the Irrigation Districts subsequently entered into memoranda of understanding with several agricultural landowners within the irrigation districts. This case arose when the Irrigation Districts entered settlement negotiations to exchange debt relief for abrogation of rights to the CAP water. Subsequently, the landowners filed suit for declaratory relief against the Irrigation Districts.

The Pinal County Superior Court held water rights were appurtenant to the irrigated land. Therefore, because the landowners had a vested right to the CAP water, the Irrigation Districts could not alter the rights granted under the memoranda of understanding through alteration of the CAWCD subcontract without the landowners’ consent.

The Arizona Supreme Court overruled the trial court. It held, under the Reclamation Act of 1902, the Boulder Canyon Project Act, and other case law, that the landowners did not have a contract with the Secretary of the Interior and therefore could not establish entitlement to the CAP water. Furthermore, the court held the landowners were not third-party beneficiaries to either the sub-contracts or the master contract and consequently did not have a vested right to the water. Therefore, because the memoranda of understanding between the landowners and the Irrigation Districts did not modify the master or subcontracts and only required that the landowners receive irrigation water, not specifically CAP water, the court determined the landowners did not have a vested right to CAP water.

Furthermore, the court dismissed the landowners’ claim that state law applied because they beneficially applied the water. The court determined different rules apply to Colorado River water due to the large size and multi-state scope; therefore, states could not interfere with associated water contracts and federal law applied. The court denied the landowners’ action for declaratory relief, vacated the lower court’s decision and remanded to the trial court for further proceedings.

Amy Mockenhaupt

In re The Gen. Adjudication of All Rights to Use Water in the Gila River Sys. and Source, 127 P.3d 882 (Ariz. 2006) (affirming and remanding interlocutory appeal from the Superior Court of Maricopa County holding that a water decree in a general stream adjudication had preclusive effect with respect to a river mainstem and no preclusive effect as to the tributaries of the river).

The Gila River (“River”) originates in Western New Mexico and flows across Arizona where it empties into the Colorado River, flowing through arid land that requires irrigation for successful agricultural applications. The San Carlos Apache Reservation and the Gila River